

SENATOR KEN ARMBRISTER  
*Chairman*  
SENATOR ROBERT DUNCAN  
*Vice Chair*  
SENATOR JANE NELSON



The Texas Senate  
Committee on Criminal Justice

SENATOR MIKE JACKSON  
SENATOR JOHN WHITMIRE  
SENATOR ROYCE WEST  
SENATOR FLORENCE SHAPIRO

Brian K. Jammer, *General Counsel*

Kelly Gilbert, *Committee Clerk*

November 1, 2000

The Honorable Rick Perry  
Lieutenant Governor of the State of Texas  
Post Office Box 12068  
Austin, Texas 78711

Dear Governor Perry:

The Senate Committee on Criminal Justice is pleased to submit its final report on Interim Charge Three. The mandate of Charge Three has prompted the Committee to:

**Review current statutes pertaining to the expunction of criminal records to determine if criminal records should be maintained with separate access by persons or entities that are not considered law enforcement from those persons or entities that are considered law enforcement. The Committee shall also ensure that personal privacy rights are adequately protected with respect to information maintained by the Department of Public Safety, other state agencies that maintain criminal records for public access, and local law enforcement. The Committee shall also consider other issues and procedures related to expunction .**

In compliance with your request, a copy of this report will be circulated to all Senators and other interested parties.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ken Armbrister", written over a horizontal line.

Senator Ken Armbrister Chairman

A handwritten signature in black ink, appearing to read "Robert Duncan", written over a horizontal line.

Senator Robert Duncan  
Vice Chairman

A handwritten signature in black ink, appearing to read "Mike Jackson", written over a horizontal line.

Senator Mike Jackson

A handwritten signature in black ink, appearing to read "Jane Nelson", written over a horizontal line.

Senator Jane Nelson

A handwritten signature in black ink, appearing to read "Florence Shapiro", written over a horizontal line.

Senator Florence Shapiro

A handwritten signature in black ink, appearing to read "Royce West", written over a horizontal line.

Senator Royce West

A handwritten signature in black ink, appearing to read "John Whitmire", written over a horizontal line.

Senator John Whitmire

## **ACKNOWLEDGMENTS**

The Senate Committee on Criminal Justice wishes to thank the following for their hard work and insights in meeting this charge.

Valerie Fulmer, Charlie Maddox and David Gavin  
**Texas Department of Public Safety**

Rob Kepple  
**Texas District and County Attorneys Association**

Betty Blackwell, Sam Dick, Keith Hampton  
D'Ann Johnson, Executive Director  
**Texas Criminal Defense Lawyers Association**

Mandy Balch  
**County and District Clerks Association of Texas**

James McLaughlin  
**Texas Police Chiefs Association**

Gary Kansteiner, Senior Attorney  
Tracy Dingham, Senior Research Assistant  
**Texas Legislative Council**

Expungement, or expunction as we commonly refer to it in Texas, is the process by which record of an arrest is destroyed or sealed. An expunction allows a person to deny the occurrence of the arrest. By court order, this criminal history record is completely deleted, and the individual can represent in sworn statements that he or she has never committed the act subject to the expunction.

Expunction in Texas is a civil procedure that alters criminal history and is a purely equitable remedy. There is no basis in constitutional authority for the alteration of criminal history once it has been accomplished. Some states refer to the process of sealing criminal records, either from the public domain or access by law enforcement, or both, as expunction. Other jurisdictions require the complete destruction of all records, include arrest, and any documentation of court proceedings predicated upon that arrest. Still other states employ a hybrid system of the two. Forty nine states, including Texas, provide for some type of process that purges individual criminal records.

Appendix A details the nature of expunction or expungement, and what those systems provide, in the states that allow the procedure.

## TEXAS LAW

Expunction in Texas is governed by Chapter 55 of the Texas Code of Criminal Procedure. Under Article 55.01(1), a person who has been arrested for the commission of either a felony or misdemeanor is entitled to have ALL records and files relating to the arrest expunged if:

- (1) the person is TRIED FOR THE OFFENSE for which the person was arrested AND is:*
  - (A) ACQUITTED by the trial court, except as provided by Subsection (c) of the article.*

Subsection (c) of Article 55.01 describes a criminal episode in which the accused may have participated in a series of crimes and purging of the information regarding one crime would hinder conviction in the proceeding or subsequent criminal act. Subsection (c) allows the court discretion to deny an order of expunction of records if necessary for prosecution in another criminal proceeding arising from the same criminal episode.

Further, Art. 55.01(1) allows expunction when the accused has been

- (B) CONVICTED AND SUBSEQUENTLY PARDONED.*

In Texas pardon for criminal convictions would require gubernatorial intervention and a recommendation from the Texas Board of Pardons and Paroles.

Alternatively, Art. 55.01 allows expunction when:

(2)EACH of the following conditions exist:

(A) an indictment or information charging the person with the commission of a FELONY has NOT BEEN PRESENTED against the person for an offense arising out of the transaction for which the person was arrested OR, if an indictment or information charging the person with commission of a felony WAS PRESENTED, it has been DISMISSED because the presentment had been made because of MISTAKE, FALSE INFORMATION, or other similar reason indicating ABSENCE OF PROBABLE CAUSE at the time of the dismissal to believe the person committed the offense or because it was VOID; **Emphasis added**

In felony cases, the standard is much higher, and rightfully so, for gaining an expunction. Only the absence of further prosecution or dismissal due to some substantial defect in the information obtained allows the expunction option to accrue for the accused. Further restrictions found in paragraph (C) of this subdivision require that the person

*HAS NOT BEEN CONVICTED OF A FELONY IN THE FIVE (5) YEARS PRECEDING THE DATE OF THE ARREST.*

In layman's terms, the individual seeking an expunction must have no arrests in their criminal history records for at least five years prior to this episode.

Paragraph (B) of Article 55.01(2), though mostly addressing misdemeanor violations of the law, adds an additional condition. Under (B), if

*the person HAS BEEN RELEASED and the charge, if any, has NOT RESULTED IN A FINAL CONVICTION and is no longer pending AND THERE WAS NO COURT ORDERED COMMUNITY SUPERVISION under Article 42.12 of this code;*

then an expunction can be pursued. Article 42.12 of the Texas Code of Criminal

Procedure proscribes the provisions of Texas community supervision law. In most cases any person who has served a period of community supervision, probation, or deferred adjudication is not eligible to have the offense expunged from their criminal histories.

Subsection (b) of Article 55.01 provides a permissive provision for those convictions overturned on appeal.

*(b) A district court may expunge all records and files relating to the arrest of a person who has been arrested for commission of a felony or misdemeanor under the procedure established under Article 55.02 of this code if the person is*

- (1) tried for the offense for which the person was arrested;*
- (2) convicted of the offense; and*
- (3) acquitted by the court of criminal appeals.*

As previously mentioned, Subsection (c) of Article 55.01 governs expunctions which may affect criminal histories necessary for convictions of previous or subsequent offenses arising out of the same criminal episode.

The remainder of Chapter 55 governs the procedure for expunction (Article 55.02), the effects of expunction (Article 55.03), provides sanction for those who violate expunction orders (Article 55.04), defines who is entitled to notice of the hearing on the proposed expunction (Article 55.05), and excepts certain drivers' license information from expunction (Article 55.06).

The general rule of Texas expunction law is that ANY ARREST that does NOT RESULT IN A PROSECUTION (that is, no indictment or criminal information is ever filed) is expungable. If the arrest results in a criminal information or indictment that is LATER DISMISSED, entitlement to expunction of this criminal history depends on whether the charge was a felony or misdemeanor. Certain misdemeanor prosecution that is dismissed and did not result in a probation is expungable. A misdemeanor dismissed after conclusion of a court ordered probationary period or deferred adjudication as proscribed by Article 42.12 is not. Successful deferred adjudications often result in the dismissal of the underlying charge, but an expunction is expressly disallowed under statute in most cases. Any felony arrest and indictment can only be expunged if it has been dismissed AND the court finds MISTAKE, FALSE INFORMATION, LACK OF PROBABLE CAUSE or that the conviction was void as a matter of law. A complete reprinting of **Chapter 55 - Expunction of Criminal Records** is reproduced in Appendix B.

The elements surrounding eligibility for an expunction are very very clear. A judge has no discretion to grant an expunction order based on any criteria other than those enumerated in Chapter 55. The Texas expunction statute does not consider time served by the offender, the amount of time that may have passed since the conviction and reparations for that conviction, the nature of the offense in most cases, the punishment and changes in that punishment over time or any conditions other than

those stated by Texas law.

Most often the need for an expunction is realized in housing or employment situations. In some housing situations, the effect of an expunction can alter access to certain housing. Liability concerns have caused employers and landlords alike to better scrutinize those they employ and house. Consider the attached Supplemental Criminal History Questionnaire (Appendix C). Numerous questions are posed regarding the criminal past of an individual. In addition persons are asked for references to vouch that there is little chance of commission or repeat of a felony crime or sex crime. As the eligible pool of employees and tenants shrinks, this type of information will be requested on a more frequent basis.

## **PRACTICAL EFFECTS OF EXPUNCTION IN TEXAS**

The Texas Department of Public Safety maintains our statewide criminal information database system, and is a party to every expunction lawsuit. According to the Department, more than four thousand expunctions are sought each year. The effect of an expunction allows the arrested to disavow any previous criminal history of this incident. Under Article 55.03(2), with certain exception, after entry of the expunction order,

*the person arrested many deny the occurrence of the arrest and the existence of the expunction order;*

This revision of history allows the person to maintain a more favorable past than previously recorded. With an expunction an individual can lawfully assert, on any job application, application for professional license, or application pursuant to a housing agreement, that he or she has never been arrested for or convicted of that offense.

Further, Article 55.03(1) prohibits

*the release, dissemination, or use of the expunged records and files for any purpose*

This prohibition includes law enforcement.

Many expunctions are sought to allow individuals access to better professional jobs.

Most are under the impression that, upon completion of a period of community

supervision or deferred adjudication, and dismissal of the underlying charge, the arrest is removed. Only through the expunction process is the record purged.

Some expunctions are sought for arrests that remain in criminal history records even though no subsequent prosecution has been pursued. Consider the case of a recent job applicant. After obtaining an expunction for an arrest that was never prosecuted, the individual was presented with a copy of a criminal history containing this arrest. Though the expunction had been granted several years prior and the arrest had been purged from the records, the arrest still mysteriously appeared in documents obtained by an Internet search service. That incident is detailed in the correspondence available under Appendix D.

This incident may become more frequent as we evolve into an instant information society. As the keepers of judicial records and arrest case files continue to receive requests for those records in electronic forms, problems will arise regarding the accuracy of past information. Tarrant County is a model county that maintains its criminal database and case files on a mainframe system accessible only at certain locations and available as a dial up service. The District Clerk of Tarrant County receives approximately thirty expunction orders each month regarding the felony cases in its custodial care. This management approach is considered vital to insuring that the county releases only the most accurate records to individuals that request them.

## **PRIVACY PROBLEMS**

To address the growth of Internet access and other developments causing massive changes in criminal justice record keeping systems, a national task force of academics, criminal justice officials representing law enforcement, the courts, corrections, and prosecution, private sector compiler entities and resellers of criminal justice information, the media, and other users of criminal justice record information was formed. Under the auspices of the Bureau of Justice Statistics in the Office of Justice Programs at the United States Department of Justice, a two year review was launched as the National Task Force on Privacy, Technology, and Criminal Justice Information. A draft of the report of the Task Force details a global policy approach pursued by the Task Force in its recommendations and its view that criminal histories should be sealed or purged when the record no longer serves an important public safety or other public policy interest. Under this draft recommendation, a sealed record would be unsealed and available for criminal justice and/or public use only when the suspect subject of the record has engaged in a subsequent offense or when other compelling public policy considerations substantially outweigh the record subject's privacy interest. The draft report also recommends criminal justice privacy law and policy give weight to the distinction between conviction information and non-conviction information. The draft report further recommends that criminal history record information, whether held by the courts, by law enforcement or by commercial compilers and resellers, should be subject

to appropriate safeguards to insure accuracy of information. A final report from the Task Force is expected by January 2001.

## **WORKING GROUP FINDINGS**

Prior to the April, 2000 hearing on this charge, the Committee established an informal working group of member staff and parties interested in the issue from prior legislative hearings. The group maintained a healthy dialogue and discussed various ways to address the equity issues and cost issues reviewed by previous groups studying expunction. The group gathered information from other states regarding their systems of expunction, and discussed at length expanding the current expunction system in Texas. Senate Bill 1564 was examined by the group as an approach to addressing youthful discretions and a model for review of misdemeanor expunctions. Emphasis in a proposed statute would require a review of the nature of the offense and allow for its expunction after the passage of time and lack of further incidences. Senate Bill 1564, 76th Legislature, is attached as Appendix E.

A two tiered system of expunction, more akin to a system known in most jurisdictions as sealing, was also discussed. A sealing system would require the establishment of an additional database for review by non law enforcement entities, and would limit the

public as well as the media from access to criminal history information. Many jurisdictions allow the sealing of criminal history records, based on the nature of the offense and the passage of time.

Other tools for disclosure manipulation, such as the Relief from Civil Disabilities certificate offered in New York state, were reviewed by staff. This certificate would allow the individual to argue in a hearing that their youthful misdeed did not diminish their ability to do a particular job and provides a measure of due process in that state. The certificate can only be granted by a judge.

Discussion also focused on reducing the cost of an expunction, through the adaptation of an administrative process provided by the Department of Public Safety. Senate Bill 840 reduced this cost by allowing the expunction proceeding to be conducted in the same judicial hearing as the trial at which the accused gained an acquittal.

## **RECOMMENDATIONS**

After lengthy deliberation, the working group determined that a consensus could not be reached to address all issues raised during the short interim study period. The focus turned to ways to improve administration of the current system of expunction until further analysis could be gained on this subject. To further enhance the current system of expunction many suggestions from the Texas Department of Public Safety are recommended by this Committee.

**RECOMMENDATION ONE:** Amend Chapter 55 to require the petitioner to serve a copy of the petition for expunction on all entities named in the petition as having records subject to expunction.

Under Article 55.02, Section 2 requires the court to give reasonable notice of the hearing to entities named in the petition. Under all circumstances is the Department of Public Safety involved in a civil petition for expunction. Without a copy of the petition, it is difficult, if not impossible, for a named party to determine whether the petitioner is entitled to the expunction. The Department of Public Safety or other law enforcement involved in the proceeding must contact the clerk with appropriate jurisdiction to request a copy of the petition. If the law enforcement agency involved received a copy of the petition when filed, it would reduce the amount of research necessary to determine

whether to oppose the expunction, as well as reducing the number of hearings to which the entities must send representatives.

**RECOMMENDATION TWO:** Amend Chapter 55 to require that a certified copy of any court paperwork arising from the arrest be attached to the petition.

Many petitions contain incomplete or incorrect information, which requires the law enforcement entity to contact the clerk's office in the county in which the arrest occurred to determine whether a charge was filed and, if so, the disposition of the case. Further, if a petition containing incorrect information is granted, the petitioner's record may not be expunged. If copies of the court paperwork were provided with the petition, both the law enforcement entities with records of the arrest and the judge hearing the petition could easily determine from the petition whether the petitioner was entitled to the expunction. Obviously, it would not be possible for court paperwork to be attached if the arrest did not result in formal charges being filed, but attaching the court paperwork to the petition if it exists would assist both law enforcement entities and other parties to the proceeding in ensuring that records entitled to expunction are properly expunged.

**RECOMMENDATION THREE:** Amend Chapter 55 to require that a minimum period of notice of a hearing be given to entities named in the petition.

As discussed prior, Article 55.02, Section 2 requires that "reasonable notice of the hearing" be provided to entities named in the petition. Often, the Department of Public Safety does not receive a notice of hearing until a few days before the hearing, which does not provide adequate time to acquire a copy of the petition, research the records to determine whether the petitioner is eligible for an expunction, and send an attorney to the county in which the hearing is being held. This may not be of as much importance to local law enforcement agencies who are located in or around the county of arrest and have access to local records, but often the Department of Public Safety must request a continuance or a motion for new trial if the continuance is not granted, or must travel to attend a hearing unnecessarily because it is unknown if the petitioner is entitled to the expunction. If thirty days notice were required in a proceeding, the additional time to review the expunction request would reduce delays in hearings on petitions and reduce unnecessary opposition from the Department of Public Safety to petitions.

The fiscal note that follows details a cost analysis for the above recommendations. It is the Committee's recommendation that these changes be pursued during the 77th Legislature.

**Estimated Fiscal Impact of  
Report Recommendations from the Senate Criminal Justice Committee**

Charge	Recommendation	First Full Year Probable Savings/(Cost); Gains/(Losses)	Estimate Source	Comments
3	3.1 Amend statute to require the petitioner to serve a copy of the petition on all entities named in the petition as having records subject to expunction from DPS records.	No Fiscal Impact	LBB Staff	Any cost involved would occur to the individual petitioner rather than to any unit of state/ local government.
3	3.2 Amend statute to require that a certified copy of any court paperwork arising from the arrest be attached to the petition when filed with DPS.	No Fiscal Impact	LBB Staff	Currently a certified copy of the current court paperwork is required when filing a petition, however, this amendment requires the copy of the court paperwork to be attached to the petition rather than come under separate cover. This allows both the law enforcement entities with records of the arrest, and the judge hearing the petition to more readily determine whether the petitioner was entitled to expunction.
3	3.3 Amend statute to require that a minimum period of notice of a hearing (30 days) be given to entities named in the petition.	No Fiscal Impact	LBB Staff	

# **APPENDIX**

## **A**

State	Statute Title	Type of Process	Circumstances Allowed	Nature of Records Allowed to be Expunged	Access to Records After Expungement or Sealing
Alabama	Expungement	Not defined	Reversal and dismissal of a conviction	DNA	Not defined
Alaska	DNA	Destroy information in the registration system	Reversal and dismissal of a conviction	DNA	Not applicable
Arizona	None				
Arkansas	Expungement and Sealing of Criminal Records	Seal and sequester the records and treat as confidential	Nolle prossed, dismissal, or acquittal; not allowed for sexual offenses if the victim was under 18	Arrest records, petitions, orders, and docket sheets	To the person whose records were sealed or the person's attorney; a criminal justice agency for employment purposes; a court with a showing of a subsequent finding of guilt; a prosecuting attorney in conjunction with a prosecution of an offense; The Arkansas Crime Information Center

State	Statute Title	Type of Process	Circumstances Allowed	Nature of Records Allowed to be Expunged	Access to Records After Expungement or Sealing
California	DNA	Destroy any specimen or sample, expunge information in the data bank and any criminal identification records	Reversal, dismissal, or acquittal	DNA	Not applicable
Colorado	None				
Connecticut	Erasure  Expungement of DNA Data Bank Records	Erase  Purge all records and identifiable information in the data bank and destroy samples	Acquittal, dismissal, 13 months after case has been nolle, or absolute pardon  Reversal and dismissal of a conviction	Police, court, and state's attorney records  DNA	Not applicable  Not applicable

State	Statute Title	Type of Process	Circumstances Allowed	Nature of Records Allowed to be Expunged	Access to Records After Expungement or Sealing
Delaware	Expungement	Forward records to the State Bureau of Identification	Nolle prosequi, dismissal, or acquittal	Criminal records, except for photographs or fingerprints taken in connection with any felony arrest and utilized by law enforcement agencies	Law enforcement officers investigating criminal activity; law enforcement agencies for employment purposes
Florida (1)	Expungement	The Department of Law Enforcement retains a copy of the records, and all criminal justice agencies must destroy their records	Failure to prosecute, nolle prosequi, dismissal	Criminal history records; not applicable for records pertaining to sexual offenses or other offenses defined as a "dangerous crime"	By court order
Georgia	Expungement of Profile in Data Bank	Purge all records and identifiable information in data bank and destroy samples	Reversal and dismissal	DNA	Not applicable

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
<b>Hawaii</b>	Expungement	Records are forwarded to the attorney general and retained in a confidential file	Failure to prosecute, acquittal, or one year after deferred adjudication discharge	Arrest records	A court or agency preparing a presentence investigation for the court; state or federal agency for certain employment purposes; law enforcement agencies acting within scope of duties
<b>Idaho</b>	Expungement  Fingerprints and Identification	Expunge all information in the data bank and database and destroy samples  Not defined	Reversal and dismissal  Failure to prosecute within one year of arrest or acquittal	DNA  Fingerprints and criminal history records	Not applicable  Not defined

State	Statute Title	Type of Process	Circumstances Allowed	Nature of Records Allowed to be Expunged	Access to Records After Expungement or Sealing
Illinois	Expungement	Arresting authority's records are expunged and the records of the clerk of the circuit are sealed or impounded	Acquittal or release without being convicted with no previous conviction; supervision dispositions after a specified waiting period, or granting of a pardon	Arrest and court records	By court order
Indiana (2)	Expungement  DNA Data Base	Return records to petitioner or destroy records  Expunge all information in DNA database and destroy samples	Failure to prosecute or dismissal  Reversal and dismissal	Fingerprints, photographs, and arrest records  DNA	Not applicable  Not applicable
Iowa	None				

State	Statute Title	Type of Process	Circumstances Allowed	Nature of Records Allowed to be Expunged	Access to Records After Expungement or Sealing
<b>Kansas (3)</b>	Expungement	Seal	Failure to prosecute, dismissal, or acquittal; three or five years after either satisfying sentence imposed or discharge, except for certain sexual and homicide offenses	Conviction, arrest records, and diversion agreements	Available to the petitioner and criminal justice agencies
<b>Kentucky</b>	Expungement	Seal	Acquittal or dismissal with prejudice; five years after completion of sentence or probation for misdemeanor offenses if not a sex offense and no previous felony conviction	Arrest records, fingerprints, and photographs, and index references	Permitted on a motion by the person who is the subject of the records

State	Statute Title	Type of Process	Circumstances Allowed	Nature of Records Allowed to be Expunged	Access to Records After Expungement or Sealing
<b>Louisiana</b>	Records of Violations of Municipal Ordinances and of State Statutes Classified as a Misdemeanor or Felony	For misdemeanor offenses the records are destroyed; for felony offenses the records are sealed	Failure to prosecute, dismissal, motion to quash, or acquittal; does not apply to DWI offenses or if person has previous felony convictions	Arrest records, photographs, and fingerprints	Available to law enforcement and criminal justice agencies and certain state medical boards
<b>Maine</b>	DNA Data Base	Purge all information and samples from the database	Reversal and dismissal	DNA	Not applicable

State	Statute Title	Type of Process	Circumstances Allowed	Nature of Records Allowed to be Expunged	Access to Records After Expungement or Sealing
Maryland	Crimes and Punishment	Records are removed from public inspection by either obliteration or removal to a secure area	Failure to prosecute, nolle prosequi, acquittal, dismissal, or motion to quash; petition may not be filed until three years after the date of disposition unless a waiver and a release are filed for all claims for tortious conduct arising from the charge; full and unconditional pardon or court may grant at any time on a showing of good cause	Police and court records	By court order
	Department of State Police	Purge records, samples, and other identifiable information from database and DNA repository	Reversal and dismissal	DNA	Not applicable

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
<b>Massachusetts</b>	Expungement	Not defined	One year after reversal and dismissal unless written authorization from the district attorney	DNA	Not defined
<b>Michigan</b>	None				
<b>Minnesota</b>	Expungement	Seal records and prohibit their disclosure	Certain marijuana convictions before 1976; criminal proceedings not resulting in a conviction that were resolved in favor of the petitioner	Arrest, indictment or information, trial, or conviction of an offense more serious than a petty misdemeanor	Unsealed for criminal investigations, prosecution, sentencing, and employment with a criminal justice agency
<b>Mississippi</b>	Expungement	Not defined	Misdemeanor charges not prosecuted within 12 months or on dismissal of charge	Not defined	Not defined

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
<b>Missouri</b>	Expungement	Destroy	Arrest was based on false information and no probable cause existed, no charges pursued, person has no prior or subsequent convictions, and no civil action is pending relating to records to be expunged	Arrest records	Not applicable
<b>Montana</b>	Expungement	Not defined	Reversal of a sexual or violent offense	DNA identification index, court, and agency records	Not defined
<b>Nebraska</b>	Criminal History Record Information  DNA Record Expungement	Not defined  Purge all records and identifiable information in database and DNA samples	Arrested due to law enforcement error  Reversal and dismissal	Criminal history records  DNA	Not defined  Not applicable

State	Statute Title	Type of Process	Circumstances Allowed	Nature of Records Allowed to be Expunged	Access to Records After Expungement or Sealing
Nevada	Removal of Records	Remove the files	Five years after an arrest if no active prosecution, an acquittal, or a disposition favorable to person and no prior convictions or subsequent arrests within five years	Arrest	Not defined
New Hampshire	Expungement	Purge all records and identifiable information in the database and destroy DNA samples	Reversal and dismissal	DNA	Not applicable

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
New Jersey	Expungement	Extraction and isolation of all records	Ten years from date of conviction, completion of probation or parole, or release from incarceration for certain offenses and has not been convicted of a prior or subsequent offense	Complaints, warrants, arrests, commitments, processing records, fingerprints, photographs, index cards, "rap sheets," and judicial docket records	By agencies for pending petitions for expungement; by Violent Crimes Compensation Board in conjunction with claims filed; by attorney general, county prosecutor, or judge in determining acceptance into a supervisory treatment or diversion program for subsequent charges, bail hearings, or presentence reports; by the parole board for evaluating the granting of parole; by the Department of Corrections for assignment to correctional and penal institutions; for employment purposes with certain agencies

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
<b>New Mexico</b>	Expungement	Expunge DNA samples and records from identification system	Reversal	DNA	Not applicable
<b>New York</b>	Establishment of DNA Identification Index	Expunge records from identification index and return samples	Reversal of conviction or granting of a pardon	DNA	Not applicable
<b>North Carolina</b>	Expungement	Not defined	Dismissal, found not guilty or not responsible, with no previous felony conviction or expungement	Arrest and court records	Not defined
<b>North Dakota</b>	Controlled Substances	Not defined	Two years after conviction for possession of one ounce or less of marijuana for a first time offender who has no prior convictions and has not subsequently been convicted of a drug offense within two years	Court records	Not defined

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
<b>Ohio</b>	Sealing	Remove records from main file and secure in separate file	Three years after final discharge for felony convictions or one year for misdemeanor convictions for first offenders of certain offenses; dismissed complaint, indictment, or information; acquittal; or no bill returned by grand jury	Records possessed by any public office or agency that relate to a criminal case	By the court, law enforcement, prosecutors, parole or probation officers for subsequent offenses; by the law enforcement officer who was involved in the case for the officer's defense in a civil action; by criminal agencies for employment purposes
<b>Oklahoma</b>	Expungement	Seal arrest and criminal records, except retain basic identification information; if left sealed for 10 years, may then be destroyed or obliterated	Failure to prosecute within one year or dismissal, acquittal, or statute of limitations expired and no charges were filed	Arrest and criminal records	On petition by attorney general and district attorney

State	Statute Title	Type of Process	Circumstances Allowed	Nature of Records Allowed to be Expunged	Access to Records After Expungement or Sealing
Oregon	Order Setting Aside Conviction or Record of Arrest	Seal	If no prior convictions for 10 years or arrests for 3 years then upon acquittal or dismissal, 1 year from date of arrest if no charges filed, or 3 years from date of conviction for certain offenses	Conviction, arrest, and official records	On motion of a prosecutor or defendant for investigation purposes

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
<b>Pennsylvania (4)</b>	Expungement	Remove information so there is no trace or indication that information existed; eliminate all identifiers that may be used to trace the identity of an individual and allow remaining data to remain for statistical purposes	In a specific criminal proceeding when no disposition has been recorded within 18 months after arrest date and no action is pending, or by court order; in general, when a person is 70 years of age and no arrest or prosecution for 10 years following final release from confinement or supervision or person has been dead three years	Identifiable descriptions, dates, and notations of arrests, indictments, informations, or other formal criminal charges and any dispositions arising therefrom; does not include intelligence information, investigative information, or treatment information, including medical and psychological information	Not applicable

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
<b>Rhode Island (5)</b>	Expungement  DNA Database	Remove, seal, and retain all records of conviction and probation	For a first offender, not convicted of a violent crime, 5 years after completion of misdemeanor sentence or 10 years after completion of felony sentence  Reversal	Arrest and conviction records  DNA	Sentencing court and law enforcement agency for subsequent offenses; bar admission; commissioner of elementary and secondary education  Not applicable

State	Statute Title	Type of Process	Circumstances Allowed	Nature of Records Allowed to be Expunged	Access to Records After Expungement or Sealing
South Carolina	Expungement	Seal and retain by the South Carolina Law Enforcement Division	Three years after date of a first conviction in a magistrate's court or municipal court for certain offenses	Arrest and conviction records	Unsealed to determine if person is a first offender in subsequent proceedings
South Dakota	Expungement of DNA Record	Purge records from database and destroy samples	Discharge, dismissal, or acquittal	Reverse, set aside, or vacate	Arrest and booking records, files, mug shots, and fingerprints
None	None			DNA	Not applicable

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
Tennessee	Destruction of Records	Remove and destroy	Dismissal, no true bill, acquittal, reversal, arrest with no charges filed, nolle prosequi, or successful completion of diversion program, except for sexual offenses	Public records only; does not include arrest histories, investigative reports, intelligence information of law enforcement agencies, or files of district attorneys that are maintained as confidential records for law enforcement purposes only	Not defined

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
Texas	Expunction	Return records and files to the court, or obliterate all portions of record or file that identify the petitioner; delete from public records all index references to records and files; the court may return the records and files to the petitioner or destroy them on the first anniversary of the expunction order	Acquittal or conviction with subsequent pardon; no felony charges filed or charges dismissed because of absence of probable cause or because void and charge is no longer pending and no probation or conditional discharge and has not been convicted of a felony five years before date of arrest	Records and files relating to the arrest	Law enforcement and prosecutors if necessary in the subsequent prosecution of the petitioner or a third party or in certain civil actions

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
Utah	Expungement	Either the sealing or the destruction of criminal records; to avoid destruction or sealing of records, any state, county, or local agency shall only expunge reference to the petitioner's name; petitioner may petition court to expunge records in whole or part; the Department of Public Safety will keep, index, and maintain all expunged arrest and conviction records	For certain convictions after a specified period of time has elapsed since release from incarceration, probation, or parole, depending on the type of offense; no charges filed, dismissal, discharge without a conviction, or acquittal	Conviction records and arrest, investigation, and detention records	DPS may release information contained in an index to the Board of Pardons and Parole, Peace Officer Standards and Training, federal authorities, Division of Occupational and Professional Licensing, or State Office of Education; for sentencing, may be admitted into evidence by court order

State	Statute Title	Type of Process	Circumstances Allowed	Nature of Records Allowed to be Expunged	Access to Records After Expungement or Sealing
Vermont	Expungement	Purge records and identifiable information from database and destroy samples	Reversal and nolle prosequi or dismissal, or a full pardon	DNA	Not applicable
Virginia	Expungement	Seal for 10 years	Acquittal, nolle prosequi, dismissal, absolute pardon	Police and court records	Law enforcement agencies for employment purposes, pending criminal investigation
	DNA Database	Purge all records and identifiable information from data bank and destroy samples	Reversal and dismissal	DNA	Not applicable

State	Statute Title	Type of Process	Circumstances Allowed	Nature of Records Allowed to be Expunged	Access to Records After Expungement or Sealing
Washington	Deletion of Certain Information	Delete	Two years after favorable disposition, or three years from date of arrest for a conviction not obtained and not under active prosecution	Criminal history records	Not applicable

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
West Virginia	Expungement	Not defined	A full and unconditional pardon for certain offenses	Criminal records	Not defined
	DNA Database	Purge the DNA records and other information from database and samples	Reversal and dismissal	DNA	Not applicable
	Conditional Discharge for First Offense of Possession	Not defined	For a first offender convicted of possession, six months after expiration of probation	Arrest, trial, and conviction records	Not defined
Wisconsin	Expungement	Purge all records and identifiable information from data bank and destroy samples	Reversal, set aside, or vacated	DNA	Not applicable

<b>State</b>	<b>Statute Title</b>	<b>Type of Process</b>	<b>Circumstances Allowed</b>	<b>Nature of Records Allowed to be Expunged</b>	<b>Access to Records After Expungement or Sealing</b>
<b>Wyoming</b>	Expungement	Expunge all identifiable information and DNA records in database	Reversal and dismissal	DNA	Not applicable

(1) A person whose record has been expunged must still acknowledge the arrest records when seeking to be employed or licensed by certain agencies or facilities.

(2) Allows a person to petition the state police department to limit access of criminal history to criminal justice agencies if more than 15 years have elapsed since the person was discharged from probation, imprisonment, or parole for the last conviction for a crime. Limited access does not apply if the person has volunteered services that involve contact with, care of, or supervision over a child who is being placed, matched, or monitored by a social services agency or a nonprofit corporation or if the person has been convicted of certain sexual offenses.

(3) A person whose record has been expunged must still acknowledge the arrest, conviction, or diversion when seeking to be employed or licensed by certain agencies or facilities.

(4) Before a state or local police department disseminates criminal history record information to an individual or noncriminal justice agency, it shall extract from the record all notations of arrests, indictments, or other information relating to the initiation of criminal proceedings if three years have elapsed from the date of arrest, no conviction has occurred, and no proceedings are pending.

(5) A person whose record has been expunged must disclose the conviction if the person is an applicant for a law enforcement agency position or for admission to the bar of any court, is an applicant for a teaching certificate or coaching certificate, or is an operator or employee of an early childhood education facility.

# **APPENDIX**

## **B**

## CHAPTER FIFTY-FIVE. EXPUNCTION OF CRIMINAL RECORDS

### Art. 55.01. Right to Expunction

(a) A person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

(1) the person is tried for the offense for which the person was arrested and is:

(A) acquitted by the trial court, except as provided by Subsection (c) of this section; or

(B) convicted and subsequently pardoned; or

(2) each of the following conditions exist:

(A) an indictment or information charging the person with commission of a felony has not been presented against the person for an offense arising out of the transaction for which the person was arrested or, if an indictment or information charging the person with commission of a felony was presented, it has been dismissed and the court finds that it was dismissed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void;

(B) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court ordered community supervision under Article 42.12 of this code; and

(C) the person has not been convicted of a felony in the five years preceding the date of the arrest.

(b) Except as provided by Subsection (c) of this section, a district court may expunge all records and files relating to the arrest of a person who has been arrested for commission of a felony or misdemeanor under the procedure established under Article 55.02 of this code if the person is:

(1) tried for the offense for which the person was arrested;

(2) convicted of the offense; and

(3) acquitted by the court of criminal appeals.

(c) A court may not order the expunction of records and files relating to an arrest for an offense for which a person is subsequently acquitted, whether by the trial court or the court of criminal appeals, if the offense for which the person was acquitted arose out of a criminal episode, as defined by Section 3.01, Penal Code, and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode.

Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979; Acts 1989, 71st Leg., ch. 803, § 1, eff. Sept. 1, 1989; Subsec. (2) amended by Acts 1991, 72nd Leg., ch. 14, § 284(53), eff. Sept. 1, 1991. Amended by Acts 1993, 73rd Leg., ch. 900, § 7.02(a), eff. Sept. 1, 1993; Acts 1999, 76th Leg., ch. 1236, § 1, eff. Aug. 30, 1999.

### Art. 55.02. Procedure for Expunction

Sec. 1. At the request of the defendant and after notice to the state and a hearing, the trial court presiding over the case in which the defendant was acquitted shall enter an order of expunction for a person entitled to expunction under Article 55.01(a)(1)(A) not later than the 30th day after the date of the acquittal. Upon acquittal, the court shall advise the defendant of the right to expunction. The defendant shall provide to the court all of the information required in a petition for expunction under Section 2(b).

Sec. 2. (a) A person who is entitled to expunction of records and files under Article 55.01(a)(1)(B) or 55.01(a)(2) or a person who is eligible for expunction of records and files under Article 55.01(b) may file an ex parte petition for expunction in a district court for the county in which the person was arrested or in the county where the offense was alleged to have occurred.

(b) The petition must be verified and shall include the following or an explanation for why one or more of the following is not included:

(1) the petitioner's:

(A) full name;

(B) sex;

(C) race;

(D) date of birth;

(E) driver's license number;

(F) social security number; and

(G) 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;

(7) the case number and court of offense; and

(8) 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 and of all central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction.

(c) The court shall set a hearing on the matter no sooner than thirty days from the filing of the petition and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition by certified mail, return receipt requested, and such entity may be represented by the attorney responsible for providing such agency with legal representation in other matters.

(d) If the court finds that the petitioner is entitled to expunction of any records and files that are the subject of the petition, it shall enter an order directing expunction.

Sec. 3. (a) In an order of expunction issued under this article, the trial court shall require any state agency that sent information concerning the arrest to a central federal depository to request such depository to return all records and files subject to the order of expunction. The person who is the subject of the expunction order or an agency protesting the expunction may appeal the court's decision in the same manner as in other civil cases.

(b) The order of expunction entered by the trial court shall have attached and incorporate by reference a copy of the judgment of acquittal and shall include:

(1) the following information on the person who is the subject of the expunction order:

(A) full name;

(B) sex;

(C) race;

(D) date of birth;

(E) driver's license number; and

(F) social security number;

(2) the offense charged against the person who is the subject of the expunction order;

(3) the date 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 of arrest under Article 60.07(b)(1) by the Department of Public Safety.

(c) When the order of expunction is final, the clerk of the court shall send a certified copy of the order by certified mail, return receipt requested, to the Crime Records Service of the Department of Public Safety and to each official or agency or other entity of this state or of any political subdivision of this state designated by the person who is the subject of the order. The Department of Public Safety shall notify any central federal depository of criminal records by any means, including electronic transmission, of the order with an explanation of the effect of the order and a request that the records in possession of the depository, including any information with respect to the order, be destroyed or returned to the court.

(d) All returned receipts received by the clerk from notices of the hearing and copies of the order shall be maintained in the file on the proceedings under this chapter.

Sec. 4. (a) If the state establishes that the person who is the subject of an expunction order is still subject to conviction for an offense arising out of the transaction for which the person was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against the person for the offense, the court may provide in its order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the investigation. In the case of a person who is the subject of an expunction order on the basis of an acquittal, the court may provide in the expunction order that the law enforcement agency and the prosecuting attorney retain records and files if:

(1) the records and files are necessary to conduct a subsequent investigation and prosecution of a person other than the person who is the subject of the expunction order; or

(2) the state establishes that the records and files are necessary for use in:

(A) another criminal case, including a prosecution, motion to adjudicate or revoke community supervision, parole revocation hearing, mandatory supervision revocation hearing, punishment hearing, or bond hearing; or

(B) a civil case, including a civil suit or suit for possession of or access to a child.

(b) Unless the person who is the subject of the expunction order is again arrested for or charged with an offense arising out of the transaction for which the person was arrested or unless the court provides for the retention of records and files under Subsection (a) of this section, the provisions of Articles 55.03 and 55.04 of this code apply to files and records retained under this section.

Sec. 5. (a) On receipt of the order, each official or agency or other entity named in the order shall:

(1) return all records and files that are subject to the expunction order to the court or, if removal is impracticable, obliterate all portions of the record or file that identify the person who is the subject of the order and notify the court of its action; and

(2) delete from its public records all index references to the records and files that are subject to the expunction order.

(b) Except in the case of a person who is the subject of an expunction order on the basis of an acquittal, the court may give the person who is the subject of the order all records and files returned to it pursuant to its order.

(c) 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 under Section 4 of this article and the person is again arrested for or charged with an offense arising out of the transaction for which the person was arrested or unless the court provides for the retention of records and files under Section 4(a) of this article. 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.

(d) 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 under Subsection (c) of this section on the first anniversary of the date the order of expunction is issued unless the records or files were released under Subsection (b) of this section.

(e) The clerk shall certify to the court the destruction of files or other records under Subsection (d) of this section.

Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979; Sec. 1(b) amended by Acts 1989, 71st Leg., ch. 803, § 2, eff. Sept. 1, 1989; Sec. 3(a) amended by Acts 1989, 71st Leg., ch. 803, § 3, eff. Sept. 1, 1989; Sec. 5(d), (e) added by Acts 1989, 71st Leg., ch. 803, § 4, eff. Sept. 1, 1989; Sec. 3(a) amended by Acts 1991, 72nd Leg., ch. 380, § 1, eff. Aug. 26, 1991; Acts 1999, 76th Leg., ch. 1236, § 2, eff. Aug. 30, 1999.

#### **Art. 55.03. Effect of Expunction**

After entry of an expunction order:

(1) the release, dissemination, or use of the expunged records and files for any purpose is prohibited;

(2) except as provided in Subdivision 3 of this article, the person arrested may deny the occurrence of the arrest and the existence of the expunction order; and

(3) the person arrested or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979; Acts 1999, 76th Leg., ch. 1236, § 3, eff. Aug. 30, 1999.

#### **Art. 55.04. Violation of Expunction Order**

Sec. 1. 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.

Sec. 2. A person who knowingly fails to return or to obliterate identifying portions of a record or file ordered expunged under this chapter commits an offense.

Sec. 3. An offense under this article is a Class B misdemeanor.

Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.

#### **Art. 55.05. Notice of Right to Expunction**

On release or discharge of an arrested person, the person responsible for the release or discharge shall give him a written explanation of his rights under this chapter and a copy of the provisions of this chapter.

Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977.

Amended by Acts 1979, 66th Leg., p. 1333, ch. 604, § 1, eff. Aug. 27, 1979.

**Art. 55.06. License Suspensions and Revocations**

Records relating to the suspension or revocation of a driver's license, permit, or privilege to operate a motor vehicle may not be expunged under this chapter except as provided in Section 524.015, Transportation Code, or Section 724.048 of that code.

Added by Acts 1993, 73rd Leg., ch. 886, § 16, eff. Jan. 1, 1995. Amended by Acts 1999, 76th Leg., ch. 62, § 3.08, eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 1236, § 4, eff. Aug. 30, 1999.

# **APPENDIX**

## **C**

**SUPPLEMENTAL CRIMINAL HISTORY QUESTIONNAIRE  
FOR RENTAL APPLICANTS, OCCUPANTS OR EMPLOYEES**

We do not automatically reject all rental applicants or prospective employees just because they or their family or co-residents have a past criminal history. We understand that everyone can make mistakes and that some people don't exercise the best judgment in their youth. A criminal record doesn't necessarily mean a person is a threat to the safety of other people.

This supplemental questionnaire will help us make an informed decision regarding the past felony crime(s) which were referred to in your rental application or in a rental/criminal history report from a credit bureau. We are asking these questions because we are concerned about the security and safety of our other residents.

Please fill in every blank. Please answer "N/A" to any question that is not applicable to you. By signing this questionnaire, you represent to us that the answers you give are true, correct and complete and contain no omissions. Please print or write legibly.

1. Your full name \_\_\_\_\_ Your SS# \_\_\_\_\_
2. Are you willing to obtain and provide to us a police clearance letter from the local police department to verify the accuracy of the information listed below? \_\_\_\_\_
3. Are you willing to obtain and provide to us a criminal history report from the Texas Department of Public Safety covering all misdemeanor and felony convictions, deferred adjudications, probations, pretrial diversions and court-ordered community supervisions? \_\_\_\_\_
4. Are felony charges or sex crime charges currently pending against you? \_\_\_\_ If so, what are the charges? \_\_\_\_\_
5. What kind of felonies or sex crime charges have you been convicted of or been placed under some kind of court order for?  
\_\_\_\_\_  
 When did it (or they) occur? \_\_\_\_\_ Where did it (or they) occur? \_\_\_\_\_  
 Was anyone physically injured during the crime? \_\_\_\_ How badly? \_\_\_\_\_ Weapon used? \_\_\_\_\_  
 How old were you at the time of the crime? \_\_\_\_\_
6. Were you given deferred adjudication, probation, pretrial diversion or court-ordered community supervision on any charges? \_\_\_\_\_ Were such charges eventually dismissed by the court? \_\_\_\_ Were you later tried on those charges despite the initial grant of deferred adjudication? \_\_\_\_\_
7. Were you given a probated sentence? \_\_\_\_ When? \_\_\_\_ For how long? \_\_\_\_\_  
 If so, state the full name(s) of your probation officer(s)? \_\_\_\_\_  
 What city and state law enforcement agencies were the probation officer(s) with? \_\_\_\_\_  
 Was your probation ever revoked? \_\_\_\_ Why? \_\_\_\_\_
8. Have you ever been incarcerated in a state or federal penitentiary? \_\_\_\_ If so, when and where? \_\_\_\_\_
9. Were you paroled? \_\_\_\_ When and where? \_\_\_\_\_ Ever revoked? \_\_\_\_\_  
 If so, state the full name(s) of your parole officer(s)? \_\_\_\_\_  
 What city and state law enforcement agencies were the parole officer(s) with? \_\_\_\_\_
10. Do you have any documents that might help reduce any concerns about your criminal history? \_\_\_\_\_  
 If so, what are they? \_\_\_\_\_ Would you furnish us a copy? \_\_\_\_\_
11. Are there any persons who will vouch that there is little chance that you'll commit or repeat a felony crime or sex crime in the future? \_\_\_\_\_ If so, please state their name(s), occupation(s) and daytime phone number(s) \_\_\_\_\_  
 \_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Your signature

# **APPENDIX**

## **D**

Expunged in 1995

~~02/18/00~~

To:

Re: Records Expunged By A Texas County Still Being Made Public  
From:

This letter is being written in regards to changes that are highly needed regarding the access of a citizen's criminal record to outside sources. With the invention of the internet and data bases refusing to update obsolete criminal records that have been expunged, it should become more difficult for individuals to obtain any citizen's criminal record. Why is a criminal record public information to begin with? As of today, Public Data, and who knows what other data base, has been selling my old criminal record to potential employers, although my record was indeed expunged. Such a system keeps falsely accused citizens criminals by allowing an old record to float on the internet when fees were paid and an expungement of record occurred. It is no less than providing an opportunity that is not equal opportunity. I was accused of robbery in '91 and as of '99, Public Data was still selling and profitting off of this obsolete record. At the same time, it has, I am about 90% sure, been a barrier to employment at some of the many places I applied. A charge of robbery, although it was no-billed, does little justice when it arrives in the hands of prospective employers. Much like changes in the law were needed to remedy the problems associated with equal opportunity for labor for the disabled, there needs to be changes in the law in terms of who can obtain criminal reports on citizens. Only law officials should be allowed access to criminal records in the absence of consent from a citizen. Potential employers would obtain consent from a citizen when that citizen

(1)

applies for employment. In fact most applications make applicants aware that background or credit checks will be made in the preliminary process. A credit report is not public information and neither should a criminal record be public info. I do not know if the fact that criminal records are public originated at the federal level of govt. or what but, as I am experiencing the setback of being falsely arrested and having to take less than appropriate work for my educational background, there needs to be restrictions as to criminal records being made public. The various counties in Texas are responsible for selling criminal records to various data bases and individuals. The names of all parties who obtain one's criminal record should begin to appear on any given individual's record as such records are ordered, such as the case is with credit inquiries. Inquiries are not done by any creditor in secret. Not only do citizens consent to the inquiry but they can also be kept knowledgeable of who all has done an inquiry on an individual's credit history. Such restrictions would banish the status quo of allowing data banks to buy info. from county officials without taking the responsibility of ~~updating~~ updating records as it becomes necessary i.e. after an expungement. There are enough problems with the criminal system and its treatment of minorities. It is also difficult enough for minorities, especially female minorities, to obtain high wage employment without the problem of obsolete criminal records not being updated. Nobody should be allowed to profit off of info. concerning citizens at the expense of these citizens who are innocent of a false charge pressed against them. It has been upsetting to know that my county (Dallas) has placed money in its pocket from selling my criminal record to various entities without requiring these entities to update expunged records. When I approached

(7)

the county about this problem, they all tell me they have sold my previous criminal record but have no responsibility or ability to get it updated. The only solution I see to this problem is to cease making criminal records accessible to anybody and everybody and make it a requirement for people wanting one's criminal record to obtain permission from the individual whose record is being requested. With technology booming and computer websites allowing information to "float" around the world, there needs to be changes in the law to prevent certain things from getting into the hands of data bases. By allowing citizens to be knowledgeable about who is retrieving one's criminal record, one is able to approach and correct the information that arrives in the hands of various parties doing inquiries. Otherwise I have to sit here and wonder who has obtained old, outdated records without the ability to approach and correct such situations. If this does not go under discrimination (employment), I have to ask why. Several attorneys, and even county commissioners, acknowledge that the above is a ~~concern~~ concern that citizens as myself have hoped to find solutions to. The way the law stands now, making criminal records public information, it is difficult to correct the above and bring about due process. To end, I seek to know what would be ~~required~~ required to make criminal records non-public data and accessible only via permission from the party whose record is sought. I also need solutions to my problem right now before possible changes in the law occur. I have, beyond a reasonable doubt, a high suspicion that this no-billed robbery appearing on my record has played a major factor in preventing the access to higher paying jobs. I can be notified at: 5708 McShann - Dallas 75230.

Sincerely,

(3)

# PUBLICDATA.com.ai

★ Texas Dallas County Criminal Case Detail

Defendant Name			Case Number P-9140017	Offense Class	Filing Agency TXDPD0000
Sex F	Race B	Birth Date 19641130	Arrest Date	Offense Date 19910215	File Date 19910227
Offense Description ROBBERY					
Address 10821 NORTH CENTRAL #1222			City/State DALLAS TX	Zip	
Disposition 1 for this case					
Court ID Criminal District Court 5			Sentence none	Probation none	Fine none
Date 19910315		Disposition Final Disposition - No-Bill by Grand Jury			

FELONY RECORD SEARCH CERTIFICATE

THE STATE OF TEXAS

COUNTY OF DALLAS

I, BILL LONG, Clerk of the District Courts of Dallas County, Texas,  
do hereby certify that a search of the Indexes from 1973 through  
the present date, on \_\_\_\_\_,  
Date of Birth \_\_\_\_\_:

XXX DOES NOT REFLECT ANY FELONY CHARGES OR CONVICTIONS.

\_\_\_\_\_ REFLECTS THE FOLLOWING:

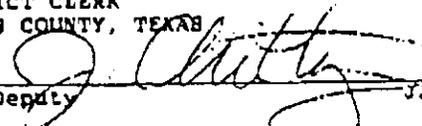
<u>Case No.</u>	<u>Offense</u>	<u>Disposition</u>
-----------------	----------------	--------------------

GIVEN UNDER MY HAND AND SEAL of said Court, in Dallas, Texas, this  
the 21ST day of JULY, 1993.

BILL LONG  
DISTRICT CLERK  
DALLAS COUNTY, TEXAS

By:

Deputy

  
J. CHITTY

FELONY RECORD SEARCH CERTIFICATE

THE STATE OF TEXAS

COUNTY OF DALLAS

I, BILL LONG, Clerk of the District Courts of Dallas County, Texas, do hereby certify that a search of the indexes from 1973 through the present date, on \_\_\_\_\_

Date of Birth \_\_\_\_\_:

XXX DOES NOT REFLECT ANY FELONY CHARGES OR CONVICTIONS.

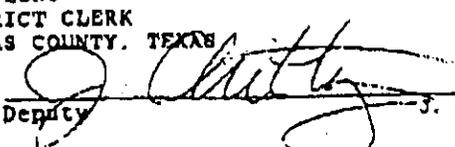
\_\_\_\_\_ REFLECTS THE FOLLOWING:

<u>Case No.</u>	<u>Offense</u>	<u>Disposition</u>
-----------------	----------------	--------------------

GIVEN UNDER MY HAND AND SEAL of said Court, in Dallas, Texas, this the 21ST day of JULY, 1995.

BILL LONG  
DISTRICT CLERK  
DALLAS COUNTY, TEXAS

By:

  
Deputy

J. CHITTY

# **APPENDIX**

## **E**

By: Armbrister  
99S0775/1

S.B. No. 1564

A BILL TO BE ENTITLED  
AN ACT

1-1 relating to the expunction of records concerning certain  
1-2 misdemeanor offenses.

1-3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-4 SECTION 1. Subsection (a), Article 55.01, Code of Criminal  
1-5 Procedure, is amended to read as follows:

1-6 (a) A person who has been arrested for commission of either  
1-7 a felony or misdemeanor is entitled to have all records and files  
1-8 relating to the arrest expunged if:

1-9 (1) the person is tried for the offense for which the  
1-10 person was arrested and is:

1-11 (A) acquitted by the trial court; or

1-12 (B) convicted and subsequently pardoned; ~~[or]~~

1-13 (2) all ~~each~~ of the following conditions exist:

1-14 (A) an indictment or information charging the  
1-15 person ~~[him]~~ with commission of a felony has not been presented  
1-16 against the person ~~[him]~~ for an offense arising out of the  
1-17 transaction for which the person ~~[he]~~ was arrested or, if an  
1-18 indictment or information charging the person ~~[him]~~ with commission  
1-19 of a felony was presented, it has been dismissed and the court  
1-20 finds that it was dismissed because the presentment had been made  
1-21 because of mistake, false information, or other similar reason  
1-22 indicating absence of probable cause at the time of the dismissal  
1-23 to believe the person committed the offense or because it was void;

1-24 (B) the person ~~[he]~~ has been released and the  
2-1 charge, if any, has not resulted in a final conviction and is no  
2-2 longer pending and there was no court-ordered probation under  
2-3 Article 42.12, Code of Criminal Procedure, nor a conditional  
2-4 discharge under Section 481.109, Health and Safety Code; and

2-5 (C) the person ~~[he]~~ has not been convicted of a  
2-6 felony in the five years preceding the date of the arrest; or

2-7 (3) all of the following conditions exist:

2-8 (A) the person was placed on community  
2-9 supervision for a misdemeanor offense that occurred before the  
2-10 person's 21st birthday;

2-11 (B) the person has not been convicted of, or  
2-12 placed on community supervision for, any felony or Class A or Class  
2-13 B misdemeanor since the occurrence of the offense for which the  
2-14 person seeks expunction;

2-15 (C) the person has no felony or Class A or Class  
2-16 B misdemeanor charges pending;

2-17 (D) all community supervision has been  
2-18 successfully terminated; and

2-19 (E) the person has attained the age of 25.

2-20 SECTION 2. This Act takes effect September 1, 1999.

2-21 SECTION 3. The importance of this legislation and the  
2-22 crowded condition of the calendars in both houses create an  
2-23 emergency and an imperative public necessity that the  
2-24 constitutional rule requiring bills to be read on three several  
2-25 days in each house be suspended, and this rule is hereby suspended.

## **WORKS CITED**

Vernons Texas Statutes and Codes Annotated, Code of Criminal Procedure, Chapter 55.

Senate Bill 1564, 76th Legislature.

Draft Report of the National Task Force on Privacy, Technology, and Criminal Justice Information, May, 2000.