

# Expunctions and Non-Disclosures County and District Clerk 2011 Annual Conference



Sheri Woodfin

Tom Green County, District Clerk



## **Expunctions –Chapter 55 of Code of Criminal Procedure**

- Chapter 55 of the Code of Criminal Procedure sets out statute for Expunctions. To be entitled to an expunction, the person must have “won” the case against them, either by acquittal, dismissal, or no case filed against them after arrest. Class C misdemeanors may also be expunged.



# Benefits of an Expunction

- Removes the arrest and case off your record.
- Does not require a party to disclose the expunged record to potential employers.
- Provides eligibility to gain professional licenses and certificates.



## **Fees for Expunction- CCP Art 102.006**

- A person entitled to or who becomes eligible for an expunction may file an **ex-parte** petition in district court.
- Filed in District Court only and as Civil Relating to Criminal Matters-(OCA)
- Civil Filing Fees apply (CCP Art 102.006)
- Certified mail- cost and copies (Calculated by cost of postage, and certified copies. We average at \$7.50 per certified mail, so a total of \$15 for notice and final order)
- Secured Electronic means or faxed-No distinction in cost is made in statute for notices being sent by fax or electronically, so the same fee for certified mail can be charged under GC 51.319 as a “reasonable fee”.



## **Acquitted- Expunction (in 30 days of acquittal) 55.02 Sec. 1**

- Upon acquittal the trial court shall advise the defendant of the right to expunction.
- *Not automatic* – The record is to be expunged at the Request of the Defendant.
- Defendant's attorney to prepare the order, if not represented by counsel, the state attorney must prepare.
- **NO FILING FEES** or cost if filed in 30 days (Art. 102.006 (b))



# **Acquittal Expunction cont.**

- The defendant/petitioner will provide a Petition and Order for expunction.
- The Order for Expunction is then presented to the judge. (No notice to the agencies in the petition is required.)
- May be filed in the criminal case within 30 days of acquittal, although some clerks choose to assign a civil number.
- Upon signing the order, the clerk will notify all agencies by mail, fax or electronically.



# **Identity Theft Expunction Art. 55.01 (d)**

- A victim of Identity Theft is entitled to an expunction of records and files relating the arrest of another person who falsely used their identity.
- The District Attorney will file the petition based on fraud.
- NO FILING FEES or cost is required.
- No hearing is required. (55.02 (2)a(d))
- Upon final Order of Expunction, all agencies will be notified by mail, fax, or electronically.



# Non-Specific Expunction Procedures

- Petitioner will file Petition/Notice of Hearing and get set for hearing. Send out a **certified copy** of petition and the hearing notice to agencies named in petition by certified mail, fax or electronically.
- If an expunction order is signed a certified copy must be sent to all agencies by certified mail, fax or electronically.
- On receipt of an expunction order the agencies notified must return all records and files subject to expunction order to the court or destroy the record if not able to return.





## **Destruction or Return of Records 55.02 Sec. 5**

- (b) All records and files returned to the court may be given to the petitioner unless the expunction was based on an acquittal or case of identity theft.
- (d) Except for acquittals and identity theft expunctions, the clerk shall destroy all files or other records maintained not earlier than the 60<sup>th</sup> day after the date the order is issued or later than the 1<sup>st</sup> anniversary of that date, unless released to the petitioner.



# **Destruction or Return cont.**

- (d-1) If destroying the file the clerk must provide at least 30 days notice to the attorney representing the state. If the state objects to the destruction of the record within 20 days you may not destroy the files/records until the first anniversary of the date of the expunction order.
- (e) If the clerk destroys the file the clerk must certify to the court the destruction of the record.
- (g) Exceptions to destruction are receipts, invoices, voucher, or similar records of financial transactions.



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

- Class B misdemeanor offense for failure to return or to obliterate indentifying portions of a record or file expunged.
- An officer or employee who knowingly disseminates, or otherwise uses an expunged record for any purpose, commits a Class B misdemeanor.



# **Non-Disclosures Chapter 411 of the Government Code**

- A person may petition the court that placed them on deferred adjudication after successful completion and a discharge or dismissal to a case and .
- Non-disclosures are not obtainable for certain offenses.



# Excluded Entities

- (1) criminal justice agencies
- (2) non-criminal justice agencies authorized by federal statute or executive order or by state statute to receive criminal history record information;
- (3) the person who is subject of the criminal history records information.



# **Understanding the Benefits of a Non-Disclosure**

- Seals the record of an arrest and conviction from the public.
- Does not require a party to disclose the non-disclosed record to potential employers.
- Makes the record only available to certain criminal justice agencies.



## **Fees and Procedures for Non Disclosures-GC 411.081 (h)**

- Civil filing with civil cost +\$28 dollars for DPS.
- Filed in District or County Court as a Civil Case Relating to Criminal Matter (OCA)
- Notice is sent by certified mail, fax or electronically to the State (DPS). No other notice is sent out by the clerk, unlike expunctions.



## **Procedures cont.**

- (g) Upon final order of Non-Disclosure, not later than 15 business days after the date of the order is issued, send all relevant criminal history record information contained in the order or a copy of the order by certified mail, fax or electronically.





## Procedures cont.

- Records that are included in the non-disclosure order should be secured from public disclosure.
- Penalties for individuals who violate a non-disclosure order by disseminating the information, range from Class B misdemeanor to second degree felony. (GC 552.142)
- Once the order is in place, petitioner cannot waive prohibition on access (AG opinion GA-0255)



## **Questions and Answers**

- Instructions, sample forms, fee breakdowns and a list of agencies with fax and/or electronic contact information is attached to your handout.