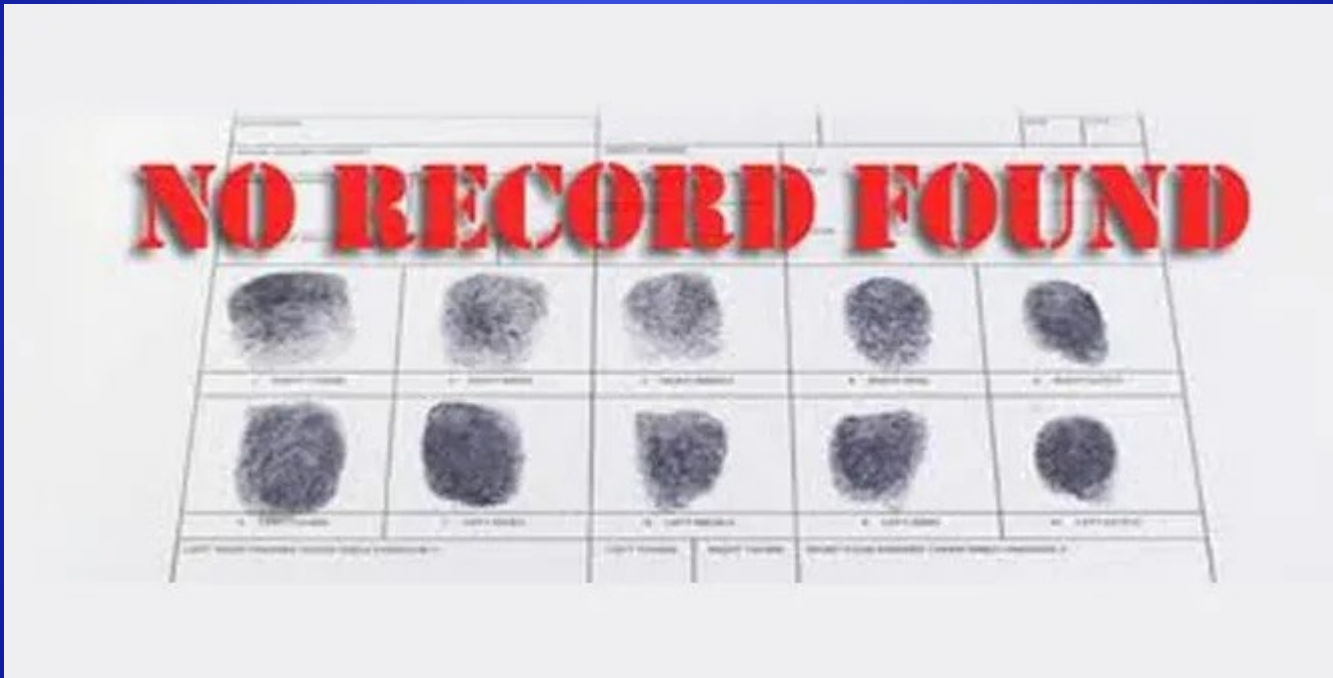


# Expunctions & Nondisclosures for Police Lawyers



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*Ellis County, Texas*

# Expunctions vs. Nondisclosures



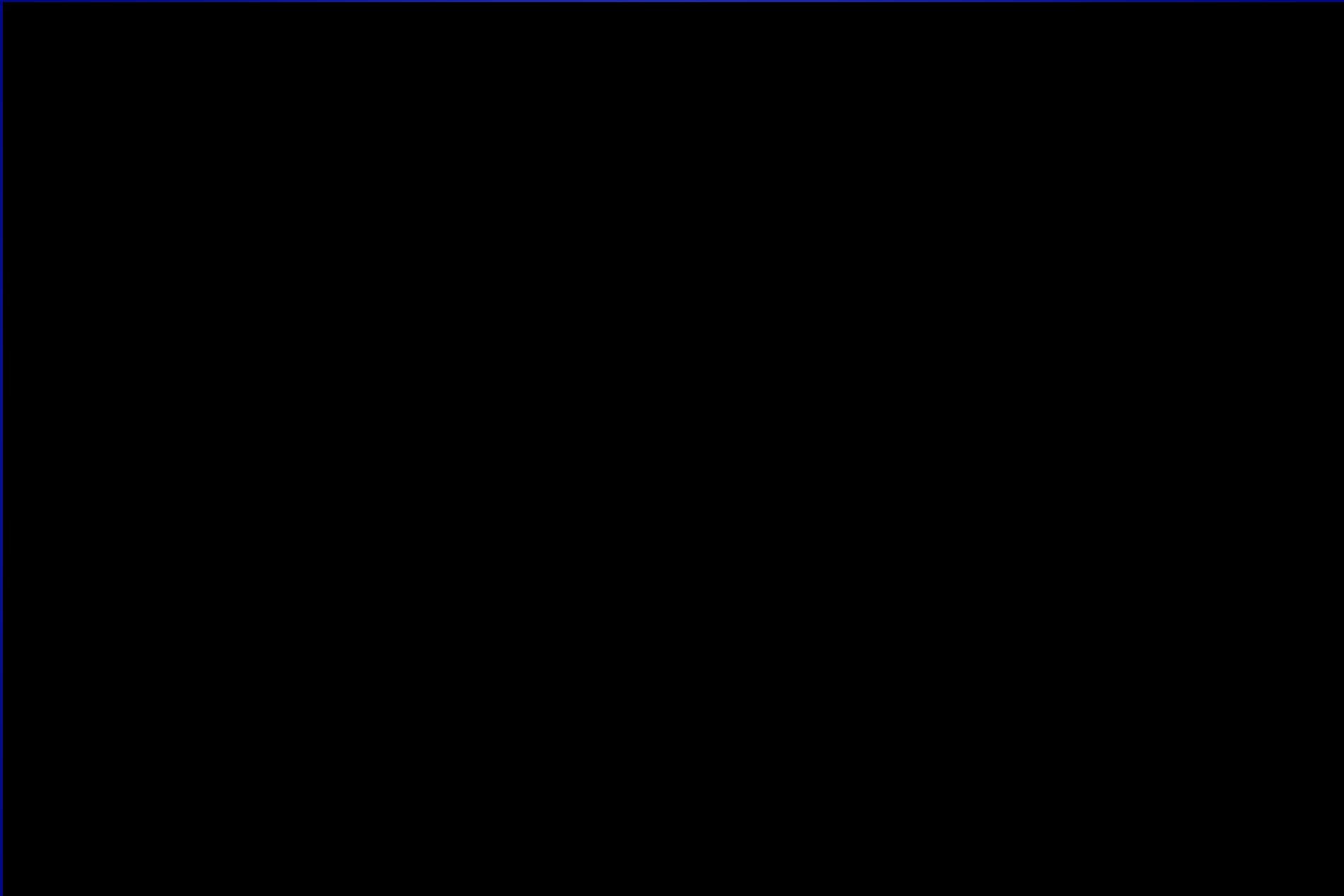
- Expunctions:
  - Intended to allow wrongly arrested person to clear their records
  - Require **total destruction** of all files and records after arrest where Petitioner acquitted or case dismissed



# Expunctions vs. Nondisclosures



- Nondisclosures:
  - Intended as a “second chance after deferred or some convictions
  - Require **sealing** of files, but they can still be used or shared under some circumstances



# Expunctions



# Four Categories

- Acquittals & Pardons
- Dismissals & No-Bills
- Discretionary
- Identity Theft

# Arrest Requirement



- Threshold requirement for expunction
- Custodial or noncustodial
- Juvenile records not eligible
- Arrest for felony or misdemeanor



# Arrest Requirement

## Acquittals

- Not eligible if convicted or still subject to prosecution for another offense out of same criminal episode.

CCP 55.01(c);

*State v. TSN*, 547 S.W.3d 617 (Tex. 2018)

## All other cases

- Felonies - if multiple charges out of same arrest, must meet requirements for all cases to expunge.
- Misdemeanors – can expunge individual offenses of arrest

*Ex parte R.P.G.P.*, 623 S.W.3d 313 (Tex. 2021)

# Acquittals & Pardons



Entitled to expunction if  
acquitted or pardoned

- Includes acquittals on appeal
- Includes relief granted on grounds of actual innocence



## UCW convictions

- Entitled if convicted of offense under PC 46.02(a) occurring before 9/1/21
  - Offense date matters, not conviction date
  - Doesn't apply to dismissals or deferred
  - Convictions under 46.02(a-1) (carrying in vehicle) or (a-4) (minor carrying knife) don't apply

# Dismissals & No-Bills

- Not pending
- Not convicted
- No community supervision except for Class C misdemeanors



And...

# Dismissals & No-Bills

Either:

- Statute of limitations has run
- If no indictment/information, waiting period expired
- If indictment/information, dismissed for certain reasons

# Waiting Period



- **Waiting period:**
  - **Felony – 3 years**
  - **Class A & B misdemeanor – 1 year**
  - **Class C misdemeanor – 180 days**
  - **OR prosecutor certifies records not needed**
- **Must include exception authorizing police & prosecutor to keep records (unless certified)**

# Reason for Dismissal

- Indictment or information presented, then dismissed or quashed
- Dismissed because:
  - Void
  - Pretrial intervention program, Veteran's Court, or mental health court
  - No probable cause

# No Probable Cause

3 considerations:

- Mistake of fact, false information, or other similar reason
- Lack of PC to believe petitioner committed offense
- Reason for dismissal



# Discretionary Expunctions

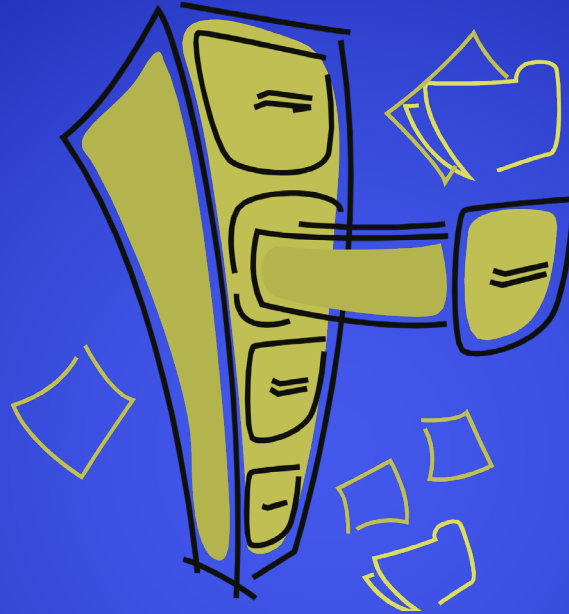


- Prosecutor must recommend before case goes to trial

# Compliance

- District Clerk sends records to agencies after order is final, then agencies comply as soon as practicable
  - No time limit in statute
- Agencies may
  - Deliver all records to District Clerk (default)
  - Delete portions of records identifying petitioner
  - Destroy record

# Which records are included?




- “All records and files relating to the arrest”
- Includes personal notes, flip books, databases
- May keep invoices, receipts, etc if identifying information is redacted

# Which records are **NOT** included?

- Records generated before the arrest
- Independent investigation records (ie, employment records, CPS)
- Personal recollections
  - BUT only if not relying on records subject to expunction
- Records not belonging to governmental agencies

# Effect of expunction



- “Release maintenance, dissemination, or use” of expunged files is prohibited **for any reason**
  - Class B misdemeanor 
- Petitioner **may** waive expunction
  - But spoliation may apply in civil cases if records destroyed



# Mistaken Identity

## ■ Two types:

- Identity theft - arrested person gives another's identifying information
- Clerical error - arrested solely due to ID information being incorrect due to clerical error



# Mistaken Identity

- Filed in county where victim lives, not where offense or arrest occurred
- DA files petition and court must grant
- Victim's identifying information **only** is redacted from file
  - Arrested person's information may be substituted if known for ID theft

# Nondisclosures





# Base Requirements

- No other convictions/deferred from time sentence pronounced through waiting period
- Never convicted/deferred for:
  - Any offense requiring sex offender registration
  - PC 19.02, 19.03, 20.04, 20A.02, 20A.03, 22.04, 22.041, 25.07, 25.072, 42.072
  - Any offense involving family violence

AND

# Fits into 1 of 10 categories...

- “Automatic” nondisclosure
- Non-DWI deferred adjudication
- First-time misdemeanor convictions
- First time DWIs
- Veterans Court or Veterans Reemployment Program
- Human trafficking or compelling prostitution victims



# “Automatic” Nondisclosures

- Deferred for misdemeanor other than PC Ch. 20, 21, 22, 25, 42, 43, 46, 49.04, 49.06, or 71
- No affirmative finding that not eligible
- No prior convictions/deferred (ever)

**AND**

- >180 days after placed on deferred

# Non-DWI Deferred Adjudication



- Serves deferred for any offense not eligible for automatic nondisclosure or for DWI
- Discharged & dismissed
- Best interests of justice

AND

# Non-DWI Deferred Adjudication



- Waiting period (from issuance of D&D):
  - 5 years for all felonies
  - 2 years for misdemeanors under PC Ch. 20, 21, 22, 25, 42, 43, & 46
  - Immediately for all other misdemeanors



# 1<sup>st</sup> Time Misdemeanor Convictions

- Convicted for any misdemeanor other than:
  - Alc Bev Code 106.041
  - PC §§ 49.04, 49.05, 49.06, 49.065, & Ch. 71
- Successfully complete probation or released from jail, including paying all fines & costs
- No prior conviction/deferred (except traffic)
- Best interests of justice

AND



# 1<sup>st</sup> Time Misdemeanor Convictions

- Waiting period (probation):
  - 2 years for misdemeanors under PC Ch. 20, 21, 22, 25, 42, 43, or 46
  - Immediately for other misdemeanors
- Waiting period (jail):
  - Immediate for fine-only misdemeanors
  - 2 years from completion of sentence

# 1<sup>st</sup> Time DWIs



- Sentenced to deferred, straight probation, or jail for DWI except for 49.04(d) (>0.15 BAC)
- Successfully discharged/released, including paying all fines & costs
- No prior conviction/deferred (other than fine-only traffic violations)
- Best interests of justice (or no affirm finding)



# 1<sup>st</sup> Time DWIs

- Offense did not result in accident involving another person

AND

- Waiting period:
  - 2 years from deferred discharge
  - 2 years from probation discharge, if ignition interlock >180 days
  - 3 years from release from jail, if ignition interlock
  - 5 years from discharge/release if no interlock





# Veterans Court

- Successfully completed Veterans Court program
  - Offense did not involve operating motor vehicle while intoxicated
  - Never previously convicted of offense under 42A.054 (former 3g) or sexually violent offense
  - Two-year waiting period
- AND
- Best interests of justice



# Veterans Reemployment Program

- Completed Veterans Reemployment Program (CCP 42A, subch. H-1)
- Completed all other conditions of probation (deferred or straight)

AND

- Best interests of justice

**NOTE:** “Base requirements” need not be met!

# Human Trafficking/ Compelling Prostitution Victims



- Convicted or deferred under:
  - PC §§ 31.03 (Class C or B theft), 43.02 (prostitution), or HSC §§ 481.120 & 481.121 (Class B delivery/poss of marijuana)
- Participated if requested by prosecutor to assist in investigation or prosecution for human trafficking or compelling prostitution
  - Or could not participate due to age or disability

AND

# Human Trafficking/ Compelling Prostitution Victims



- Committed offense solely as victim of human trafficking or compelling prostitution

AND

- Best interests of justice.
- May consolidate multiple offenses in county of most recent

# Effect of nondisclosure



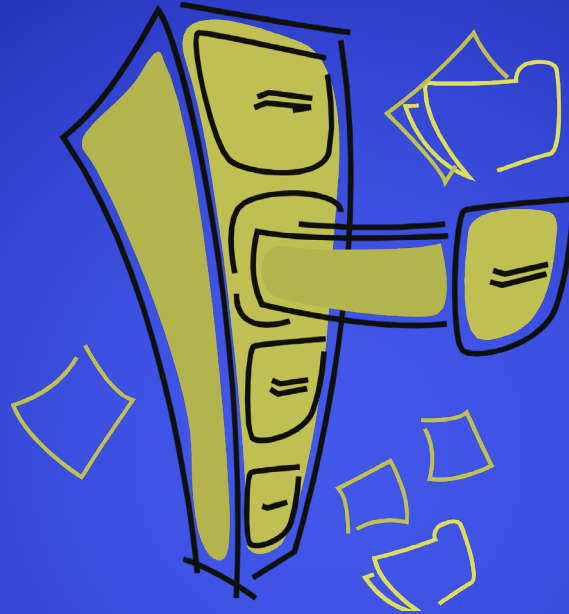
- Agency must seal records within 30 days of notice from DPS
- Agencies may not release information except to:
  - Petitioner
  - Other criminal justice agencies, for criminal justice purposes
  - List of exempt agencies
- Petitioner may **not** waive nondisclosure

# Exempted agencies

- Educational agencies
  - School districts, Board for Educator Certification, TEA
- Regulatory & licensing agencies
  - Board of Law Examiners, Private Security Board, Board of Nursing, Dept of Insurance
- Health services
  - Medical Board, Dept of State Health Services, hospitals

*See complete list at Gov't Code 411.081(i)*

# Which records are included?



- “Criminal history record information”
- Identifiable descriptions and information about a person



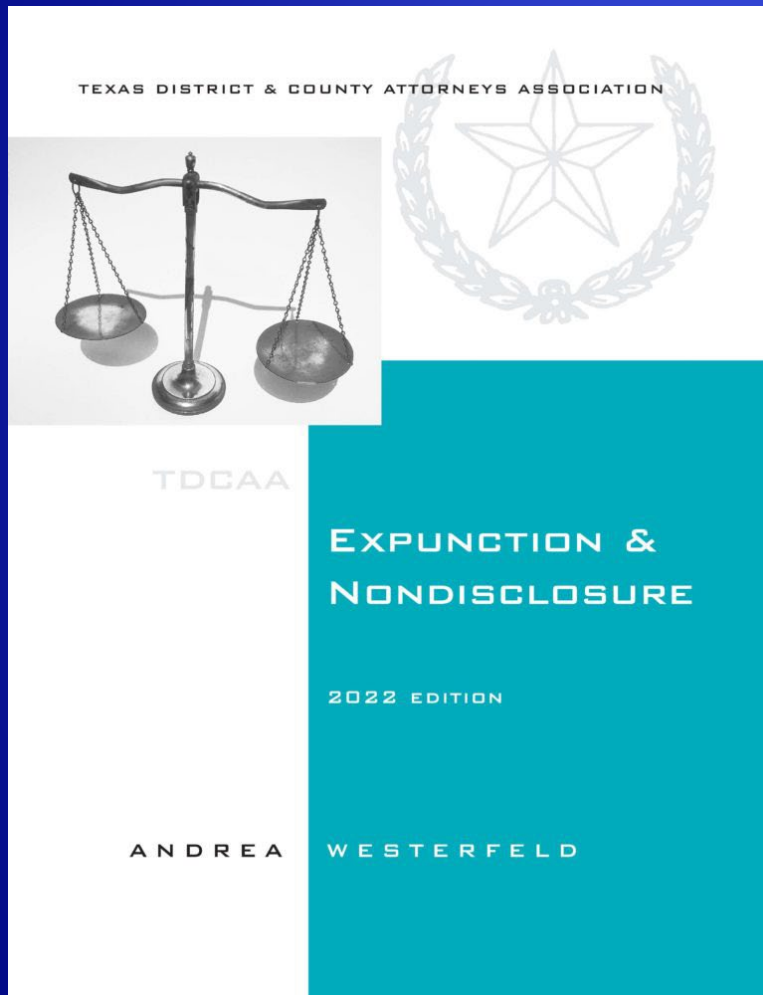
# Which records are **NOT** included?

- Fingerprints and other identification information that does **not** indicate involvement in criminal justice system
- Posters, etc for identifying or apprehending fugitives
- Public judicial, administrative, or legislative proceedings, and clemency announcements
- Court records & published judicial or administrative opinions

# Petitioner's Rights

- Petitioner may deny occurrence of arrest and prosecution
  - Unless information being used against him in subsequent criminal proceeding
- Petitioner is **not** required to disclose on any application for employment or licensing

# Thank you!



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Book available at  
tdcaa.com