

EXPUNCTION FAQ'S

Do I need a lawyer to request expunction of records of an arrest?

No, but hiring an attorney is highly recommended unless you are comfortable with preparing legal documents, such as a petition and an expunction order. Also, the expunction statutes (which appear in Chapter 55 of the Code of Criminal Procedure) are complex, and an attorney can provide valuable advice about whether you are eligible for an expunction.

Do the district courts in Montgomery County conduct oral hearings on all the expunction petitions?

No, in most expunction proceedings, the parties agree that the petitioner is eligible for relief, and an agreed order of expunction is submitted to the district court for a hearing by written submission only. It's up to the judge, but an appearance in court is usually unnecessary if an agreed order is timely submitted.

How will I know if the district attorney agrees that I am eligible for an expunction?

After the petition is filed, the district attorney's office will notify the petitioner's attorney by E-mail (or by regular mail if no E-mail address is provided) if it is not opposed to the expunction, and suggest preparation of an agreed order.

Who signs an agreed order of expunction?

At this time, agreed orders in Montgomery County are typically signed by the petitioner's attorney and by counsel for the district attorney. The other government agencies usually do not participate in the process unless they are opposed to the expunction, in which case they will file formal answers and must be included in all further proceedings.

Does the district attorney represent other county agencies, such as the clerk and the sheriff?

No, the district attorney represents only himself in Montgomery County expunction proceedings. If other governmental agencies appear at all, they will be represented by their usual counsel in civil actions.

Are there expunctions that do not involve the district attorney's office?

Yes, if the petitioner was prosecuted only in a municipal court and there was no appeal, a proposed agreed order should be directed to the appropriate city attorney.

How are the agreed orders of expunction circulated?

A proposed agreed order can be delivered to the district attorney by E-service, ordinary E-mail, regular mail, or hand-delivery. The district attorney's office will ordinarily return the signed agreed order to the petitioner's attorney by E-mail.

Can the district attorney deliver a signed agreed order directly to the court?

No. Because of the large volume of expunction orders being processed, the district attorney's office cannot be responsible for getting all of the expunction orders approved by the courts. An agreed order will be returned to you for submission to the court.

Will the district attorney object to expunging more than one criminal case in a single expunction proceeding?

No. Petitioners are encouraged to include in a single petition all of the arrests for which expunction is sought.

Can my deferred adjudication probation be expunged?

Only if the court deferred adjudication of your guilt of a class C misdemeanor offense, *i.e.*, an offense punishable by fine only. Under present Texas law, deferred adjudications for more serious offenses cannot be expunged, but you may be eligible for an order of nondisclosure. Please see the nondisclosure FAQ's on this website.

Will the district attorney waive the statutory waiting periods in article 55.01 and agree to an immediate expunction of a dismissed case?

Sometimes. If a case is completely resolved and there will be no further investigation or prosecution, the Montgomery County District Attorney will ordinarily agree to an immediate expunction ***unless*** the case involves an alleged sexual offense or an allegation of family violence. Cases involving alleged sexual offenses or family violence will be reviewed upon request to determine if an exception to this policy is appropriate.

How long does an expunction take? I've got a job interview coming up.

Unfortunately, it takes several months to complete the expunction process. The submission dates are set several weeks in advance, and the courts must wait for the formal submission date to see if any respondents object to the expunction. The orders do not become final for at least thirty days after they are signed. After the orders are final and certified copies are delivered to the respondents, it may take some time for an agency to actually expunge all of the information in its possession.

Where can I get sample forms?

Sample forms for use in preparing an expunction petition and order are available at law libraries and certain websites—including this one. The district attorney offers no guarantee that the forms appearing on this website are appropriate for any particular expunction proceeding, and you should exercise care to ensure that these generic sample forms are amended and supplemented as may be required to suit the needs of a particular expunction petitioner.

The district attorney cannot provide legal advice to citizens, and making these forms available should not be regarded as legal advice concerning their suitability for use in any particular case.