

## **Instructions for Expunction of Minor Convictions**

This package constitutes the statutory requirement of this court to inform you of your right to an expunction as provided by 45.054 Texas Code of Criminal Procedure, 45.0216 Texas Code of Criminal Procedure, 106.12 (a) Texas Alcoholic Beverage Code. 161.255 Texas Health and Safety Code, it includes legal requirements, rules, court procedures and forms required for all types of municipal court expunctions. The role of the municipal court clerk's office is to provide you with this package. Court staff is prohibited in advising or assisting you in the preparation of your petition for expunction. You have a constitutional right to retain legal counsel at your own expense or you may represent yourself in this action as a "pro se" defendant.

- Has paid the filing fee of \$30.00 (Effective 1/1/06)
- Expunction by case type:
  - Minor In Possession or Consumption of Alcohol 106.12 ABC
    - Must have passed your 21st birthday
    - May not have been convicted of any other alcohol related offenses
  - Minor Driving Under the Influence of Alcohol 106.12 ABC
    - Must be 21 years of age or older
    - May not have been convicted of any other alcohol related offenses
  - Minor In Possession or Consumption of Tobacco products 161.255 HSC
    - Must have completed the tobacco awareness program ordered by the court
  - Youth in Violation of The Education Code - Failure To Attend School 45.054 CCP
    - Must be 18 years of age or older
    - May not have been convicted of a subsequent offense for failure to attend school
  - Child Convicted of Penal Code or Penal Ordinance offenses 45.0216 CCP
    - May not have been a charge of Public Intoxication
    - Must be 17 years of age or older
    - May not have been convicted of any other penal offenses

### Notice of Right of Expunction

Expunge means to erase, remove, or wipe out. When a case is expunged, the judge issues an order that dictates that the conviction, along with all complaints, verdicts, sentences, and other documents be expunged from the applicant's records.

#### ALCOHOL RELATED OFFENSES

**ELIGIBILITY:** The minor must not have been convicted of more than one alcohol-related offense and **is now 21 years old.** (Section 106.12(a), A.B.C.) The person must file with the municipal court that tried the case an application with a sworn affidavit that the person only has one conviction/deferred (the one he or she is trying to expunge) and is now 21 years of age. (Section 106.12(b), A.B. C.) After the order is issued, the applicant is released from all disabilities arising from the conviction. In addition, the case may not be shown or made known for any purpose. (Section 106.12(c), A.B.C.)

#### *106.12. EXPUNGEMENT OF CONVICTION OF A MINOR.*

- a) Any person convicted of nor more than one violation of this code while a minor, on attaining the age of 21 years, may apply to the court in which he was convicted to have the conviction expunged.*
- b) The application shall contain the applicant's sworn statement that he was not convicted of any violation of this code while a minor other than the one he seeks to have expunged.*
- c) If the court finds that the applicant was not convicted of any other violation of this code while he was a minor, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant shall be released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose*

#### PENAL CODE OFFENSES

**ELIGIBILITY:** A child who is at least 10 years of age and under age 17 and has been convicted/deferred/teen court of **only one fine-only offense** described in Sections 8.07(a)(4) and (5) of the Penal Code may apply to the court in which he or she was convicted to have the conviction expunged and **is now at least 17 years old.** Section 8.07, P.C., provides for the age affecting criminal responsibility. Subsections 8.07(a)(4) and (5) include penal ordinance offenses and fine-only Penal Code offenses. *See* Art. 45.0216, C.C.P. After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose.

The application must be in writing and made under oath. It must contain a statement that the person was not convicted while a child of any offense described by Subsections 8.07,(a)(4) or (5), P.C., other than the offense the person seeks to have expunged.

*Art. 45.026. EXPUNCTION OF CERTAIN CONVICTION RECORDS OF CHILDREN*

- a. In this article, "child" has the meaning assigned by Section 51.02, Family Code.*
- b. A person convicted of not more than one offense described by Section 8.07(a)(4) or (5). Penal Code, while the person was a child may, on or after the person's 17<sup>th</sup> birthday, apply to the court in which the child was convicted to have the conviction expunged as provided by this article.*
- c. The person must make a written request to have the records expunged. The request must be under oath.*
- d. The request must contain the person's statement that the person was not convicted while the person was a child of any offense described by Section 8.07(a)(4) or(5), Penal Code, other than the offense the person seeks to have expunged.*
- e. The judge shall inform the person and any parent in open court of the person's expunction rights and provide them with a copy of this article.*
- f. If the court finds that the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child, the court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record. After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose*
- g. This article does not apply to any offense otherwise covered by:*
  - i. Chapter 106, Alcoholic Beverage Code;*
  - ii. Chapter 161, Health and Safety Code; or*
  - iii. Section 25.094, Education Code.*
- h. Records of a person under 17 years of age relating to a complaint dismissed as provided by Article 45.051 or 45.052 may be expunged under this article.*
- i. The justice or municipal court may not require a person who requests expunction under this article to pay any fee or court costs.*
- j. The procedures for expunction provided under this article are separate and distinct from the expunction procedures under Chapter 55.*

## EDUCATION CODE OFFENSES

**ELIGIBILITY:** When the child reaches the age of 18, he or she may apply to the court in which the conviction/deferred/teen court occurred, to have the conviction expunged. The request must be in writing and made under oath. It must contain a statement that the person does not have more than one conviction of Failure to Attend School described by Sections 26.094(g) Texas Education Code, other than the offense the person seeks to have expunged.

### *Art. 45.055, EXPUNCTION OF CONVICTION AND RECORDS IN FAILURE TO ATTEND SCHOOL CASES*

- a) An individual convicted of not more than one violation of Section 25.094, Education Code, may, on or after the individual's 18<sup>th</sup> birthday apply to the court in which the individual was convicted to have the collection and records relating to the conviction expunge.*
- b) To apply for an expunction, the applicant must submit a written request that:
  - i. is made under oath;*
  - ii. states that the applicant has not been convicted of more than one violation of Section 25.094, Education Code; and*
  - iii. is in the form determined by the applicant.**
- c) The court may expunge the conviction and records relating to the conviction without a hearing or, if facts are in doubt, may order a hearing on the application. If the court finds that the applicant has not been convicted of more than one violation of Section 25.094, Education Code, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a school district or law enforcement agency, to be expunged from the applicant's record. After entry of the order, the applicant is released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose. The court shall inform the applicant of the court's decision on the application..*
- d) The court may not require an individual who files an application under this article to pay any fee or court costs for seeking expunction.*

## HEALTH AND SAFETY CODE

**ELIGIBILITY:** An individual may apply to the court in which the conviction/deferred occurred, to have the conviction expunged. The request must be in writing and made under oath. The applicant must have completed the Tobacco Awareness Course for each conviction.

### *161.255 EXPUNGEMENT OF CONVICTION*

*An individual convicted of an offense under HSC Section 161.252 may apply to the court to have the conviction expunged. If the court finds that the individual satisfactorily completed the tobacco awareness program or tobacco-related community service ordered by the court, the court shall order the conviction and any complaint, verdict, sentence or other document relating to the offense to be expunged from the individual's record and the conviction may not be shown or made known for any purpose.*

### **EXPUNCTION OF MINOR CHILD CHARGED WITH PENAL OFFENSE: Art. 45 .0216.**

**Expunction of Certain Conviction Records of Children** (a) In this article, "child" has the meaning assigned by Section 51.02, Family Code, (b) A person convicted of not more than one offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child may, on or after the person's 17th birthday, apply to the court in which the child was convicted to have the conviction expunged as provided by this article. (c) The person must make a written request to have the records expunged. The request must be under oath. (d) The request must contain the person's statement that the person was not convicted while the person was a child of any offense described by Section 8.07(a)(4) or (5), Penal Code, other than the offense the person seeks to have expunged. (e) The judge shall inform the person and any parent in open court of the person's expunction rights and provide them with a copy of this article. (f) If the court finds that the person was not convicted of any other offense described by Section 8.07(a)(4) or (5), Penal Code, while the person was a child, the court shall order the conviction, together with all complaints, verdicts, sentences, and prosecutorial and law enforcement records, and any other documents relating to the offense, expunged from the person's record. After entry of the order, the person is released from all disabilities resulting from the conviction and the conviction may not be shown or made known for any purpose. (g) This article does not apply to any offense otherwise covered by: (1) Chapter 106, Alcoholic Beverage Code; (2) Chapter 161, Health and Safety Code; or (3) Section 25.094, Education Code. (h) Records of a person under 17 years of age relating to a complaint dismissed as provided by Article 45.051 or 45.052 may be expunged under this article. (i) The justice or municipal court may not require a person who requests expungement under this article to pay any fee or court costs. (j) The procedures for expunction provided under this article are separate and distinct from the expunction procedures under Chapter 55. Added by Acts 2001, 77th Leg., ch. 1297, Sec. 50, eff. Sept. 1, 2001.