

## FAQs – Clearing an Arrest from your Record (Expunction)

Texas Legal Services Center (<https://texaslawhelp.org/directory/legal-resource/texas-legal-services-center>) [1]

This article answers frequently asked questions about clearing an arrest from your record (expunction).



### Can I clear an arrest from my record?

You may be able to clear an arrest from your record through a process called **expunction** or **expungement**. This routinely happens when:

- charges were never filed, or
- charges were filed, but then dismissed.

Use the **Fresh Start app** (<https://georgetown.neotalogic.com/a/TexasFreshStartV2>) [2] see if you may be eligible for an expunction.

### Do I have to go to court?

Yes, you must almost always go to court to clear an arrest from your record. (*But, if you hire a lawyer to represent you, the judge may allow the lawyer to go to court without you.*)

You may use the instructions and forms in this toolkit, I need to clear an arrest from my record, to ask a judge to clear an arrest from your record. You must also meet the requirements set out in the law and listed in the Petition for Expunction of Criminal Records (Charges Dismissed or Quashed) or the Petition for Expunction of Criminal Records (Charges not Filed).

You will file (turn) in court forms in the district clerk's office in the same county where you were arrested or where the offense(s) allegedly occurred.

**Note:** The expunction procedures for the following circumstances are different and are not addressed in this toolkit. Talk with a lawyer if you need to clear an arrest from your record after an:

- acquittal,
- pardon,
- order of actual innocence,
- charges were never filed and the statute of limitation has not expired before the filing of the petition,
- you have not been tried and the prosecutor recommends expunction,

- your case involves a “waiting period” and “discretionary expunctions” which require the prosecutor’s assistance and participation in the expunction petition,
- you have an error on your criminal history record because someone else used your name when he or she was arrested,
- You have been convicted of any similar crimes in the past, or
- The arrest you want expunged involved multiple crimes, some of which you were convicted of or may still be prosecuted for.



### **Does it cost anything to file (turn in) a Petition for Expunction of Criminal Records?**

Yes. There is a fee to file a Petition for Expunction of Criminal Records and additional fees for notifying agencies. The fees vary by county. Call the clerk’s office in the county where you were arrested or where the offense allegedly occurred to learn the fees.

### **Can I ask to have my court fees waived?**

If you cannot afford the court fees for your case, you can ask the judge to waive the fees by filing a **Statement of Inability to Afford Payment of Court Costs** (<https://texaslawhelp.org/form/statement-inability-afford-payment-court-costs>) [3].

### **How long does it take to get a hearing date after I file (turn in) my court papers?**

Ask the clerk of the court where you file your court papers how to schedule a hearing date for your case. The hearing date will be at least 30 days after you file your Petition.

### **Will anyone else be at court for the hearing?**

The clerk will give each official, agency or governmental entity named in your Petition notice of the hearing.

Any of the parties listed in your Petition may go to your hearing. If they do not want your record cleared, they can tell the judge at your hearing.

### **Will the Court automatically approve my Petition?**

No. The Court will *not* approve your Petition if:

- You do not meet the requirements, or
- If any party in your case opposes your Petition, and the judge agrees with their opinion.

### **How can I prove my record was cleared?**

If the court approves your Petition, everyone listed on your Petition will be ordered to remove the arrest from your record.



You can also send the Expunction Order to the **Foundation for Continuing Justice** (<http://www.continuingjustice.org>) [4] at [www.continuingjustice.org](http://www.continuingjustice.org) (<http://www.continuingjustice.org>) [4]. They will send copies of the Expunction Order to private companies that may have your record on file.

### **If my record is cleared do I have to tell anyone about the arrest?**

No, *unless* you are under oath in a criminal proceeding about the arrest. But, you can explain that the arrest was cleared from your record.

### **Should I talk with a lawyer to find out if I can ask for my record to be cleared?**

Yes! If possible, talk with a lawyer.

You can hire a lawyer just to:

- give you advice and review your expunction forms, or
- represent you at your expunction hearing.

You may also be able to talk with a lawyer for free at a legal clinic.

If you need help finding a lawyer, you can:

- Contact your **local lawyer referral service**. (<https://texaslawhelp.org/node/85>) [5]
- Use our **Legal Help Finder** (<https://texaslawhelp.org/legal-help/legal-help-finder>) [6] tool.
- Check our **Legal Clinic Calendar** (<https://texaslawhelp.org/legal-clinic-calendar>) [7]

### **Is there anything else I should do after the Judge signs the Order?**

Yes. About 6 months after the judge signs your Order, get your criminal history from the Department of Public Safety to confirm the arrest has been removed

from your records.

You should also send the Expunction Order to the **Foundation for Continuing Justice (<http://www.continuingjustice.org>) [4]** at **www.continuingjustice.org (<http://www.continuingjustice.org>) [4]**. They will send copies of the Expunction Order to private companies that may have your record on file. This is a free service.



### **Which law enforcement agencies will be notified to return or destroy the records about this arrest?**

You need to list the agencies that you want to be notified on the Petition for Expunction of Criminal Records. These include a list of the law enforcement agencies involved in your arrest and any other official or agency that may have a record or file of your arrest (jails, courts, prosecuting attorneys, etc.). Also list any private entities that sell criminal history information if you have reason to believe they have information related to your arrest.

Also, be sure to send the Expunction Order to the **Foundation for Continuing Justice (<http://www.continuingjustice.org>) [4]** at **www.continuingjustice.org (<http://www.continuingjustice.org>) [4]**. They will send copies of the Expunction Order to private companies that may have your record on file. This is a free service.

For more information, see the Petition for Expunction of Criminal Records and Instructions for Completing Petition for Expunction of Criminal Records.

### **Where can I read the law about clearing an arrest from my record?**

Read the law here: **Texas Code of Criminal Procedure, Chapter 55 (<http://www.statutes.legis.state.tx.us/Docs/CR/htm/CR.55.htm>) [8]**.

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### **Links**

[1] <https://texaslawhelp.org/directory/legal-resource/texas-legal-services-center>

[2] <https://georgetown.neotalogic.com/a/TexasFreshStartV2>

[3] <https://texaslawhelp.org/form/statement-inability-afford-payment-court-costs>

[4] <http://www.continuingjustice.org>

[5] <https://texaslawhelp.org/node/85>

[6] <https://texaslawhelp.org/legal-help/legal-help-finder>

[7] <https://texaslawhelp.org/legal-clinic-calendar>

[8] <http://www.statutes.legis.state.tx.us/Docs/CR/htm/CR.55.htm>

