



ReedSmith

## The Nuts and Bolts of Employment Law

Modinat “Abby” Kotun

Attorney

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Driving progress  
through partnership

# WHAT WE'LL COVER

**At-Will Employment**

**Anti-Discrimination / Anti-Harassment Laws**

**Leave Laws**

**Pay Laws**

# WHAT WE WON'T COVER

**WARN (mass terminations and plant closings)**

**Unemployment Law**

**Employee Benefits Laws (e.g., COBRA, ERISA)**

**HIPAA**

**FCRA**

**OSHA**

**USERRA**

**Unfair Competition/Non-Compete Law**

**Employment Agreements**

# AT-WILL EMPLOYMENT

## Texas is an “At-Will Employment” State:

“...absent a specific agreement to the contrary employment may be terminated by the employer or the employee at will, for good cause, bad cause, or no cause at all.”

# ANTI-DISCRIMINATION LAWS

**U.S. employers MUST make employment decisions without regard to:**

- **Sex**
- **Pregnancy**
- **Race**
- **Color**
- **Religion**
- **National Origin**
- **Age (40 years old and older)**
- **Disability**

# EXAMPLES OF EMPLOYMENT DECISIONS THAT CANNOT BE BASED ON PROTECTED CHARACTERISTICS

- **Hiring**
- **Compensation**
- **Promotions**
- **Transfers**
- **Terminations (including layoffs)**
- **Leave**
- **Job assignments**
- **Discipline**
- **Performance evaluations**
- **Benefits, conditions, or privileges of employment**

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# Anti-Discrimination/Anti-Harassment/ Anti-Retaliation Laws

# TITLE VII OF THE CIVIL RIGHTS ACT OF 1964

- **Prohibits discrimination and harassment based upon race, color, national origin, sex/gender, or religion**
- **Applies to employers with 15 or more employees**
- **Protects applicants and employees**
- **Texas Commission on Human Rights Act (Chapter 21 of the Texas Labor Code) – basically mirrors Title VII plus additional protected classes**

# TITLE VII

## Two Types of Discrimination:

- **Disparate Treatment**  
Plaintiff alleges employer discriminates overtly against members of the protected class
- **Disparate Impact**  
Plaintiff alleges employer's apparently non-discriminatory practices result in disproportionately heavy impact on the protected class

# TITLE VII

- For disparate treatment, a finding of discriminatory motive is required. A plaintiff can prove such motive through either direct or circumstantial evidence.
- When proving through circumstantial evidence, a court analyzes the claim under the *McDonnell Douglas* framework.

*Cicalese v. Univ. of Texas Med. Branch*, 924 F.3d 762, 766 (5th Cir. 2019).

# TITLE VII

- Under the *McDonnell Douglas* framework, a plaintiff must establish a *prima facie* case by showing the plaintiff:
  - (1) belongs to a protected group;
  - (2) was qualified for the position sought;
  - (3) suffered an adverse employment action; and
  - (4) was replaced by someone outside the protected class.

*Boyd v. Mississippi Dep't. of Pub. Safety*, 751 Fed. Appx. 444, 450 (5th Cir. 2018), *cert. denied*, 139 S. Ct. 1215 (2019) (citing *Price v. Fed. Express Corp.*, 283 F.3d 715, 720 (5th Cir. 2002)).

# TITLE VII

- If the plaintiff makes out a *prima facie* case, then the burden shifts to the employer to produce a legitimate, non-discriminatory reason for the adverse employment action.
- Then, the burden shifts back to the plaintiff, and the plaintiff must show that the employer's proffered reason was a pretext for discrimination.

*Boyd*, 751 Fed. Appx. at 450.

# TITLE VII

- **Exhaustion of Administrative Remedies**
  - **Must file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC) within 300 days, because Texas state law also prohibits the conduct**
    - Texas law: must file a charge with the Texas Commission on Human Rights Act within 180 days if you want to sue under state law.
    - EEOC has a form – check the boxes and provide a narrative

# TITLE VII

- **EEOC may investigate your claim, or merely issue you a “right-to-sue” letter.**
  - **Plaintiff may also request a right to sue letter**
- **Must file suit in Federal Court within 90 days of receiving the “right-to-sue” letter.**
  - **Texas Law – must file within 60 days from receipt of “right-to-sue” letter if you want to sue under state law instead of Title VII.**

# EMPLOYMENT HARASSMENT

- **Forget the dictionary definition of harassment**
- **Harassment in the legal sense is prohibited conduct; distinct from hiring and firing decisions.**
- **Two types of harassment:**
  1. **Quid Pro Quo (sexual harassment); and**
  2. **Hostile Work Environment**

# “QUID PRO QUO” HARASSMENT

- **Unwelcome sexual advances, requests or conduct where submission to the conduct is used as the basis for an “employment decision” or is explicitly or implicitly made a condition of employment.**
  - **Forced to choose between submission to sexual advances and employment benefits.**

# HOSTILE WORK ENVIRONMENT HARASSMENT

- Looks to the general atmosphere of the workplace, such as verbal and/or physical conduct that “unreasonably interferes with an individual’s work or performance” or creates an “Intimidating, hostile or offensive working environment.”
- This theory is not just restricted to “sexual” or gender-based harassment – possible to have a hostile work environment based upon race, age, disability, etc.
  - “... not a general civility code.”

# HOSTILE WORK ENVIRONMENT HARASSMENT

- **Must prove “severe or pervasive” conduct.**
  - **Reasonable person standard – would the conduct substantially affect the work environment of a reasonable person?**
    - Not the “hyper-sensitive person” standard
    - But it is the reasonable person view from the victim’s perspective:
      - ❖ Ex: only woman in an all male office may find something offensive that her male co-workers believe to be fine.

# HOSTILE WORK ENVIRONMENT HARASSMENT

- **Unless the conduct is quite severe, a single incident or isolated incidents of offensive sexual conduct or remarks generally do not create an abusive environment.**
  - **The “N word” – is once enough?**
    - The Supreme Court says no. “...[M]ere utterance of an ethnic or racial epithet which engenders offensive feelings in an employee would not affect the conditions of employment to a sufficiently significant degree to violate Title VII.”
  - **Could one incident suffice?**
    - The EEOC says yes. “The Commission will presume that the unwelcome, intentional touching of a charging party’s intimate body areas is sufficiently offensive to alter the condition of her working environment and constitute a violation of Title VII.”

# HOSTILE WORK ENVIRONMENT HARASSMENT

- **Factors in the *severe or pervasive* determination:**
  - the frequency of the conduct,
  - the severity of the conduct,
  - whether or not the conduct is physically threatening or humiliating,
  - what context the conduct occurs in, and
  - the totality of all the circumstances.

# IS THE EMPLOYER RESPONSIBLE FOR HARASSMENT?

- If the harasser is a **CO-WORKER**, the company is only liable if it is negligent (knew or should have known and failed to act)
- If the harasser is a **SUPERVISOR** and there is a tangible employment action, the company is strictly liable
- If the harasser is a **SUPERVISOR** and there is no tangible employment action, the company is liable if the employee reports and the company does not take appropriate action

# U.S. ANTI-RETALIATION LAWS

- **Prohibit materially adverse employment actions against employees who have engaged in protected activity**
- **Examples of Protected Activity**
  - Internal report of discrimination (or participating in investigation)
  - Filing charge of discrimination (with Equal Employment Opportunity Commission) or a lawsuit alleging discrimination
  - Complaining about payment (or non-payment) of overtime or filing a lawsuit related to overtime pay
  - Whistleblower protections and refusal of unlawful conduct

# TITLE VII – REMEDIES

- **If the Plaintiff prevails in court, may recover damages for:**
  - back pay, front pay, reinstatement
  - mental anguish
  - attorneys' fees and expert and court costs.
- **If the conduct was intentional, or if the employer acted with malice or reckless indifference, the court may also award punitive damages.**
  - Compensatory and punitive damages are subject to a cap based on the size of the employer.

# SECTION 1981 OF THE CIVIL RIGHTS ACT OF 1866

- **Prohibits discrimination based upon race/color and ethnicity**
- **Applies to all employers**
- **No administrative exhaustion requirement**
- **No cap on punitive and compensatory damages**

# AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)

- **Prohibits discrimination against employees on the basis of age (40 and over).**
- **Applies to employers with 20+ employees for each working day for 20 weeks in current or preceding year.**
- **Bona Fide Occupational Qualifications – Law recognizes that with age some physical abilities are diminished; allows mandatory retirement ages for certain occupations such as pilots, law enforcement, firefighters, etc.**
- **Generally uses Title VII standards and procedures.**

# PREGNANCY DISCRIMINATION ACT (PDA)

- **Amends Title VII**
- **Prohibits discrimination on the basis of pregnancy, childbirth, or related medical conditions**
- **Prohibits retaliation against a person because of a protected activity (e.g., complaining about discrimination, filing a charge, participating in an investigation or lawsuit)**

# AMERICANS WITH DISABILITIES ACT (ADA)

- **Prohibits discrimination against a qualified individual with a disability**
- **An individual with a disability is a person who:**
  - Has an impairment that substantially limits a major life activity
  - Has a record of such an impairment, or
  - Is regarded as having such an impairment
- **Qualified person with a disability has all the attributes necessary to perform the job with or without a reasonable accommodation.**

# ADA

- **“Reasonable accommodation” is one that allows a qualified individual with a disability to perform the essential functions of a job.**
  - Exceptions: (1) undue hardship; (2) direct threat of harm



# Leave Laws

# FAMILY AND MEDICAL LEAVE ACT (FMLA)

- **FMLA provides for 12 weeks of unpaid leave in a 12-month period for eligible employees for a qualified event**
- **Applies to employers that employ 50+ employees for each working day during 20+ weeks in the current or preceding calendar year**

# FMLA

- **“Eligible Employees” are those who:**
  - have worked for the company for at least 12 months
  - have worked at least 1,250 hours in the preceding 12-month period
  - work at a location where 50+ employees work within 75 miles
  - themselves or family member has a serious health condition
  - have not used up all available FMLA leave
  - have a qualifying event

# FMLA

- **Qualifying Events:**

- Employee's own serious health condition
- To care for a spouse, son, daughter, or parent who has a serious health condition
- Incapacity due to pregnancy, childbirth, or prenatal medical care
- To care for employee's child after birth or placement (adoption or foster care)
- A qualifying exigency involving the employee's spouse, son, daughter, or parent who is a military member on covered active duty
- To care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member

# FMLA/ADA

## FMLA

**An eligible employee is entitled to a maximum of 12 weeks of job-protected leave per 12-month period.**

## ADA

**However, the employee could be entitled to more than 12 weeks of leave as a reasonable accommodation unless the employer can show undue hardship.**

**Employer is not required to offer leave as an accommodation if another effective accommodation is provided.**



# Pay Laws

# FAIR LABOR STANDARDS ACT (FLSA)

- **Establishes minimum wage, overtime pay, recordkeeping, and child labor standards**
  - Federal Minimum Wage: \$7.25/hour (Texas law mirrors federal wage.)
  - Overtime: 1½ times the regular rate of pay for all hours worked over 40 in a workweek
  - If Texas law or union agreement provides greater protection or pay to the employee, those provisions apply.

# FLSA

- **Certain white-collar exemptions**
- **Exempt v. non-exempt status is the most litigated issue in federal courts.**
  - Non-Exempt Employees – entitled to overtime pay and, depending on where employed, other advantages, including certain meal and rest breaks (not in Texas)
  - Exempt Employees – employees working in certain executive, administrative and professional positions exempted from the minimum wage and overtime pay requirements, or other positions which meet the requirements for an exemption granted by law

# FLSA

**Employees generally must satisfy a duties test and a salary test to be exempt**

- **Salary Test – effective January 1, 2020, employee must meet these minimum qualifications to be exempt from overtime:**
  - Paid \$684 per week (\$35,568 per year)
  - Highly Compensated Employees - \$107,432 per year
  - Nondiscretionary bonuses and incentive payments (including commissions) now count toward annual salary - up to 10%
    - Must be made annually or more frequently to qualify

# FLSA

## Duties Test – Job position’s “primary duty”

- **Factors considered include**
  - Relative importance of exempt duties
  - Amount of time spent on exempt duties
  - Freedom from supervision
  - Wages paid to other employees for nonexempt work

# FLSA

- **Penalties for Violating the FLSA:**
  - Amount of unpaid minimum wages and overtime
  - Additional “liquidated damages” equal to the unpaid wages and overtime
  - If “good faith” and “reasonable grounds” to believe FLSA was not being violated, court may set aside liquidated damages award
  - Attorneys’ fees and costs
- **2 year statute of limitations; 3 years if “willful” violation**

# EQUAL PAY ACT (EPA)

- **Prohibits wage discrimination based on gender**
- **Employers may not pay unequal wages to men and women performing substantially equal work in the same establishment**
- **Employer Defenses for Differences in Wages**
  - Seniority system
  - Merit system
  - Incentive system
  - Any other factor other than sex/gender

# EPA

- **May proceed directly to court (no administrative exhaustion requirement)**
- **Statute of Limitations: 2 years/3 years if willful violation**
- **Damages**
  - Salary differential
  - 100% liquidated damages
  - Attorneys' fees and costs

# CONTACT INFORMATION

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**Office: 713-469-3815**

**LinkedIn: <https://www.linkedin.com/in/abbykotun/>**

# OVERCOMING CRIMINAL BARRIERS TO EMPLOYMENT

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AZIZA TRAVIS

ANTHONY FRANKLYN

“Free persons from the permanent shadow and burden of an arrest record” *State v. T.S.N.*, 547 S.W.3d 617, 623 (Tex. 2018).

# OVERVIEW

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- Background
- Expunction vs. Nondisclosure
- Relevant Statutes and Provisions
- Filing Process
- Expunction Petition
- Nondisclosure Petition
- Effects of Expunction and Nondisclosure

# BACKGROUND

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- “Ban the box”
- Equal Employment Opportunity Commission (EEOC) Guidance
- Judicial Opinions
- Legislative Efforts



# EXPUNCTION VS. NONDISCLOSURE

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- Expunction
  - Removes entry from adult criminal history record
  - As if it never happened
- Nondisclosure
  - Keeps certain law enforcement agencies from publicly disclosing
  - Still on record available to certain governmental entities and background checks

# RELEVANT STATUTES AND PROVISIONS

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- Expunctions
  - Chapter 55 of the Texas Code of Criminal Procedure
  - Offenses not resulting in a conviction due to not filing, dismissal of charges, pardon, or acquittal
  
- Nondisclosures
  - Section 411.072 et seq. of the Texas Government Code
  - Applies to misdemeanor and felony offenses (carveout for DWI/BWI or organized crime offense)
  - Cannot be a violent or sexual offense (simple assault not considered violent)
  - No prior offense conviction or deferred adjudication, excluding Class C traffic offenses
  - DWI/BWI (If 1<sup>st</sup> offense and Class B)- Sections 411.0726 and 411.0731 of the Texas Government Code
  - Automatic v. Petition

# ELIGIBILITY TO PETITION THE COURT FOR AN ORDER OF NONDISCLOSURE

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- Eligible after 2 years if for a DWI, BWI, or Misdemeanor under Texas Penal Code Chapters 20, 21, 22, 25, 42, 43, or 46
- Eligible after 5 years if for a Felony
- No waiting period for everything else





# ELIGIBILITY TO PETITION THE COURT FOR AN ORDER OF EXPUNCTION

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- An arrest (custodial or noncustodial) for either a felony or misdemeanor
- Acquitted by judge or jury
- Released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court-ordered supervision, unless for a Class C misdemeanor
- If charge dismissed or quashed after person completes veterans treatment court, mental health court, pretrial intervention program, charge was presented by mistake or false information, or charge was void
- Not entitled to an Expunction if convicted or still subject to prosecution for another offense rising out of the same criminal episode
- Tried, convicted and either pardoned or 'otherwise granted relief on the basis of actual innocence. The court must indicate on its face that the pardon or order was granted on the basis of "actual innocence"
- Recommendation by State Attorneys

# PROCESS OF FILING FOR NONDISCLOSURE OR EXPUNCTION ORDER

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- Best Practice: Obtain State background check
- Filing fees: approximately \$292 for Expunctions, \$285 for Nondisclosures
- Attorney's in private practice
- Read and understand the statutes (read them one more time, then read them again 😊)
- Respondent is usually the District Attorney's office
- Must file in the original trial court where the petition was arrested or the offense was alleged to have occurred (district court justice or municipal court)

# INFORMATION NEEDED FOR EXPUNCTION AND NONDISCLOSURE

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1. Petitioner's pertinent information:

NAME:	
SEX:	
RACE:	
DATE OF BIRTH:	
TEXAS DRIVER'S LICENSE NUMBER:	
SOCIAL SECURITY NUMBER:	
TRACKING NUMBER	

2. Offense the subject of this Petition:

ALLEGED OFFENSE:	
DATE OF ALLEGED OFFENSE:	
DATE OF ARREST:	
COUNTY WHERE ARRESTED:	
MUNICIPALITY WHERE ARRESTED:	
ARRESTING AGENCY:	
CAUSE NUMBER:	
COURT:	
DATE OF DISCHARGE AND DISMISSAL:	

If an element is missing, explain why: i.e. Information is unavailable

# INFORMATION NEEDED FOR EXPUNCTION AND NONDISCLOSURE

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- Petitioner has reason to believe the following governmental agencies may have records or files pertaining to Petitioners in connection with the arrest and/or alleged offense described above:
  - Town/City Police Department
  - County Clerk
  - District Attorney
  - County Jail
  - Texas Department of Safety

# CONTESTED VS. UNCONTESTED

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- For Expunctions, if the court can decide on this issue, you will not have to hold a hearing
- If any of the respondents named in the petition contest the Order, they may file a general denial there is a hearing, all response must be given at least 30 days notice
- At the hearing, the petitioner has the burden to prove his right to an Expunction
- After filing an Expunction petition, a hearing date will be set in no fewer than 30 days from the date filed. At the same time, all agencies listed must be served notice of the hearing at least 30 days prior to the hearing date. They can either file a denial or appear at the hearing if they wish to oppose the expunction.
- If the court grants an expungement, it usually takes up to 180 days for local, state, and federal agencies to destroy their records.



# CONTESTED VS. UNCONTESTED

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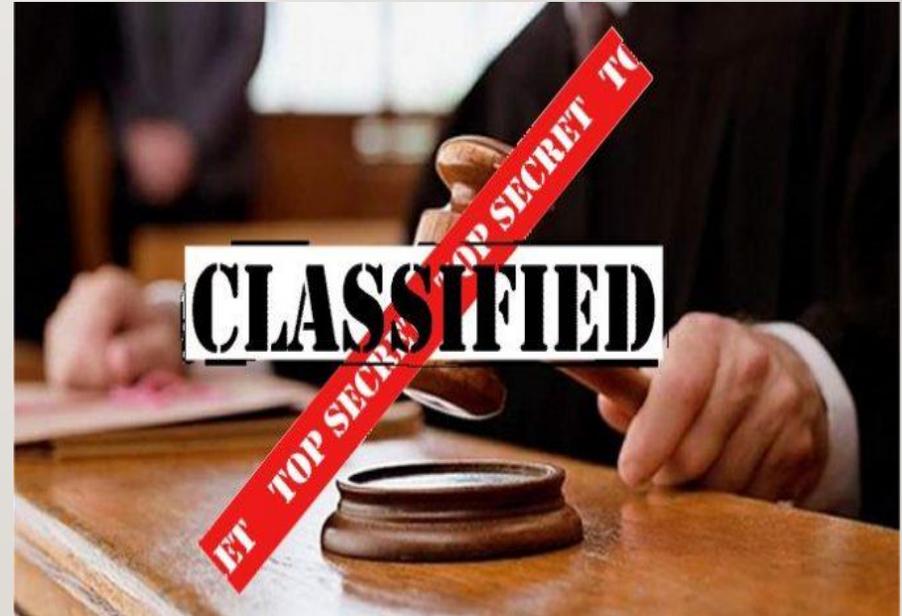
- A petition for an Order of Nondisclosure can be denied for the following reasons: (1) the court does not find that granting your case will be in the interest of society, (2) you did not pay your fines, or (3) there was an inaccuracy in the court file and/or in your application.  
411.081(d-e)
- The State must request a hearing w/45 days of receiving notice to the court, or the court may just grant the Order w/o a hearing. If there is a hearing petitioner still has the burden of proof
- For Nondisclosures, agencies must seal the records w/ 30 days of notice from the Department of Public Safety



# REMEDIES FOR VIOLATION OF ORDERS

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- Business Code Chapter 109
- It can be up to \$500 per day per violation



# CLOSING THE CASE

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- Speak to your client about what to expect next
- Closing letter to client about when they can apply for anything that this Order prevented them from previously

# EFFECTS OF GETTING AN EXPUNGEMENT ORDER OR AN ORDER OF NONDISCLOSURE

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- Credit
- Housing
- Family Stability
- Education
- Employment

# NEED FOR EXPUNCTIONS/NONDISCLOSURES

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*We cannot conceive of any business necessity that would automatically place every individual convicted of any offense in the permanent ranks of the unemployed.*

—Green v. Missouri Pacific Railroad Company, 523 F.2d 1290, 1298 (8th Cir. 1975)



# EMPLOYMENT BARRIERS

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- People with records face widespread employment discrimination
- Many employers use a criminal record as a screening tool for new applicants, even if not relevant to position
- Statutory bans on people with certain convictions working in certain fields (e.g. nursing, childcare, home healthcare)
  - Ban in these fields disproportionately affect women of color and lower socioeconomic means

# HELPING THOSE NOT ELIGIBLE FOR NONDISCLOSURE OR EXPUNCTION

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- Talk about changing industries
- Discuss letter of recommendations and referrals
- Hiring List with companies and agencies that will hire someone with a negative criminal history
- Positive reinforcement, encouragement and hope

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# Questions

Aziza Travis

[travisa@lanwt.org](mailto:travisa@lanwt.org)

Anthony Franklyn

[anthony.franklyn@huschblackwell.com](mailto:anthony.franklyn@huschblackwell.com)

**Sample Order of Nondisclosure**

**NO. 123-12345-11**

<b>EX PARTE</b>	§	<b>IN THE COUNTY COURT</b>
	§	
	§	<b>AT LAW NUMBER 123</b>
	§	
<b>JOHN Q. PUBLIC</b>	§	<b>TEXAS COUNTY, TEXAS</b>

**ORDER PROHIBITING PUBLIC DISCLOSURE OF  
CRIMINAL HISTORY RECORD INFORMATION**

Today, the Court heard the Petitioner’s petition asking the Court to issue an order prohibiting criminal justice agencies from disclosing the defendant’s criminal history record information relating to the offense that gave rise to the Petitioner’s deferred adjudication. *See* Tex. Gov’t Code §411.071-77. After notice to the State, the Court conducted a hearing on the Petitioner’s petition, or a hearing was not requested after proper notice.

After hearing all the evidence, the Court is of the opinion that the petition is meritorious. Accordingly, the Court FINDS:

(1) The Petitioner entered a plea of guilty or nolo contendere in this cause, and the Court placed him on deferred adjudication community supervision;

(2) At the end of the period of supervision, the Court dismissed the proceedings in this cause and discharged the Petitioner from deferred adjudication community supervision;

(3) The Petitioner satisfies the requirements of Sections 411.071-77 **(OR 411.081)** of the Texas Government Code;

(4) The Petitioner was entitled to file the petition and tendered a twenty-eight dollar (\$28.00) fee to the clerk; and

(5) Issuance of the order is in the best interest of justice.

The Court **ORDERS** that criminal justice agencies are prohibited from disclosing to the public criminal history record information related to the following offense:

Cause Number:	123-98765-10
Offense:	Theft \$50<500
Date of Offense:	September 1, 2015
Date of Arrest:	September 1, 2015
Arresting Agency:	Anytown Police Department
County:	Texas County
TRN:	123456789

The Court further **ORDERS** the Clerk of this Court, not later than 15 business days after the date of this Order, to send a copy of this Order (or all relevant criminal history record information contained in the Order) to the Crime Records Service of the Department of Public Safety by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission.

Pursuant to Section 411.075(b) of the Texas Government Code, the Crime Records Service of the Department of Public Safety shall, not later than 10 business days after receipt of a copy of this Order (or all relevant criminal history record information contained in the Order), seal any criminal history record information maintained by the department that is subject to the Order. The department shall also send a copy of the Order (or all relevant criminal history record information contained in the Order), by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission, to all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting

attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state, and to all central federal depositories of criminal records that there is reason to believe have criminal history record information that is the subject of the order, including:

Anytown Police Dept.  
123 Police Way  
Anytown, Texas 12345

Texas County District Attorney  
123 Courthouse Road, Suite 100  
Anytown, Texas 12345

Texas County Jail  
123 Jail Drive  
Anytown, Texas 12345

Texas County District Clerk  
123 Courthouse Road, Suite 200  
Anytown, Texas 12345

Texas County Clerk  
123 Courthouse Road, Suite 300  
Anytown, Texas 12345

Pursuant to Section 411.075(g) of the Texas Government Code, individuals and entities described by Texas Government Code Section 411.075(b) shall, not later than 30 business days after receipt of a copy of this Order (or all relevant criminal history record information contained in the Order), seal any criminal history record information maintained by the individual or entity that is subject to the Order.

The Court further **ORDERS** that this document is confidential. It is not public information as that term is defined under the Texas Public Information Act and shall not be disseminated pursuant to a request made under the Public Information Act.

This Order does not prohibit disclosure of this offense to other criminal justice agencies, to the Petitioner himself, or to other entities as specifically provided for by statute.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
JUDGE PRESIDING

APPROVED AS TO FORM:

For the State:

\_\_\_\_\_  
Assistant Criminal District Attorney

APPROVED AS TO FORM & CONTENT:

For Petitioner:

\_\_\_\_\_  
Attorney for Petitioner

**Sample Petition – Other DWI Convictions**

**No. 123-123456-11**

**EX PARTE** § **IN THE COUNTY COURT**  
§ **AT LAW NUMBER 123**  
**JOHN Q. PUBLIC** § **TEXAS COUNTY, TEXAS**

**PETITION FOR NONDISCLOSURE OF CRIMINAL HISTORY RECORD**  
**INFORMATION UNDER SECTION 411.0736**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, **JOHN QUINCY PUBLIC** (“Petitioner”) and moves this Court to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense described more particularly below as provided under Section 411.0736 of the Texas Government Code. Petitioner would respectfully show the following:

**I.**

Petitioner’s full name is John Quincy Public, and his date of birth is May 14, 1985.

On January 1, 2016, Petitioner was convicted of the following offense:

Offense:	Driving While Intoxicated
Date of Offense:	September 1, 2015
Date of Arrest:	September 1, 2015
County:	Texas County
Agency:	Anytown Police Department
Criminal Cause Number:	123-98765-09
Tracking Incident Number (TRN):	123456789

## **II.**

This Court sentenced Petitioner to six months in jail. On July 7, 2016, Petitioner was finally released from confinement.

## **III.**

Petitioner was not convicted of an offense under Penal Code Section 49.04(d).

## **IV.**

The applicable waiting period has passed. *See* Tex. Gov't Code §411.0736(f). During the period of community supervision and during any applicable waiting period, Petitioner has not been convicted of or placed on deferred adjudication under Code of Criminal Procedure Article 42A.102 for any offense other than an offense under the Transportation Code punishable by fine only.

## **V.**

The current offense was not:

- (1) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
- (2) an offense under Section 20.04 of the Penal Code, regardless of whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;
- (3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, or 42.072 of the Penal Code;
- (4) any other offense involving family violence, as defined by Section 71.004 of the Family Code; or
- (5) any offense for which the court has made an affirmative finding of family violence, as defined by Section 71.004 of the Family Code.

## **VI.**

Petitioner has never been previously convicted or placed on deferred adjudication community supervision for any offense other than an offense under the Transportation Code punishable by fine only.

**VII.**

Issuance of the order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which Petitioner successfully completed deferred adjudication community supervision is in the best interest of justice.

**VIII.**

**WHEREFORE, PREMISES CONSIDERED,** it is respectfully requested that the Court issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the above offense.

Respectfully submitted,

---

Jane Doe  
Attorney for Petitioner  
State Bar No. 123456789  
123 Lawyer Road, Suite 100  
Anytown, Texas 12345  
(123) 456-7890  
(123) 456-0987 FAX

**CERTIFICATE OF SERVICE**

I certify that a true copy of the Petition for Nondisclosure of Criminal History Record Information Under Section 411.073 has been sent by first-class mail to the Texas County District Attorney's Office, 123 Courthouse Road, Suite 100, Anytown, Texas 12345, on this, the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Jane Doe

*Sample Order – Dismissal/No-Bill*

**Cause No. 123-12345-2011**

**EX PARTE** § **IN THE 123RD**  
§ **DISTRICT COURT OF**  
**JOHN Q. PUBLIC** § **TEXAS COUNTY, TEXAS**

**ORDER GRANTING EXPUNCTION**

On the \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_, came to be heard Petitioner’s Petition for Expunction. The Court finds Petitioner is entitled to an expunction pursuant to Article 55.01(a)(2) of the Texas Code of Criminal Procedure.

I.

Petitioner has the following description:

Name: John Quincy Public  
Race: White  
Sex: Male  
Date of Birth: January 1, 1950  
Driver’s License Number: TX 12345678  
Social Security Number: 123-456-7890

II.

Petitioner is entitled to expunction of the following Texas County arrests:

Offense Charged: Driving While Intoxicated  
Date of Arrest: January 1, 2011  
Cause Number: N/A (case not filed)  
Court of Offense: N/A (case not filed)  
TRN: 123456789

The Court finds that no indictment or information was presented against Petitioner for an offense arising out of the transaction for which Petitioner was arrested or, if an indictment or information was presented, the indictment or information has been dismissed or quashed, and the statute of limitations has run or the indictment or information was dismissed or quashed because the presentment was made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe Petitioner committed the

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offense.

The Court further finds Petitioner has been released and the charge, if any, has not resulted in a final conviction and is no longer pending, and there was no court-ordered community supervision under Article 42.12 of the Code of Criminal Procedure for any offense other than a Class C misdemeanor.

III.

The respondents have been served with a copy of the Petition as required by law. Petitioner appeared in person with counsel. An Assistant District Attorney appeared on behalf of the Texas County District Attorney's Office.

Respondents are:

Anytown Police Dept.  
123 Police Way  
Anytown, Texas 12345

Texas County District Attorney  
123 Courthouse Road, Suite 100  
Anytown, Texas 12345

Texas County Jail  
123 Jail Drive  
Anytown, Texas 12345

Texas County District Clerk  
123 Courthouse Road, Suite 200  
Anytown, Texas 12345

Texas County Clerk  
123 Courthouse Road, Suite 300  
Anytown, Texas 12345

Texas Department of Public Safety  
Attn: Expunctions  
P.O. Box 4143  
Austin, Texas 78765-4143  
*Individually and for the Federal Bureau of Investigation*

IV.

IT IS THEREFORE ORDERED that all records and files pertaining to the

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arrest(s) granted herein be expunged. Related arrests (same or similar charge, date, or arresting agency) not specifically listed herein are excluded from this expunction order. However, records of such unexpunged arrests, which would not have been generated except for the expunged arrest, shall be expunged.

The phrase “all records and files pertaining to the arrest” includes records and files that were generated by respondents during this expunction proceeding, including the copies of the Petition and of this order, which are served on each respondent. However, the phrase “all records and files pertaining to the arrest” does not include records and files that were generated during the investigation of the crime for which Petitioner was arrested, but before the arrest took place, and that do not indicate that the arrest ever took place.

The phrase “all records and files pertaining to the arrest” does not include records relating to the suspension or revocation of a driver’s license, permit, or privilege to operate a motor vehicle except as provided in Section 524.015 and Section 724.048 of the Texas Transportation Code.

V.

Records and files pertaining to the arrest shall be expunged by turning them in to the Clerk of this Court, in a sealed envelope, by hand delivery or by mail to:

Texas County District Clerk  
Attn: Expunctions  
123 Courthouse Road, Suite 200  
Anytown, Texas 12345

Videotapes and audiotapes shall be expunged by erasing them.

Records that pertain both to this arrest and to other arrests that are not included in this order, and that would have been generated even if the expunged arrest had not been made shall be obliterated (covered with tape, liquid paper, or other opaque substance) only insofar as they pertain to this arrest. A photocopy of such records, partially obliterated, shall be forwarded to the District Clerk as specified in the paragraph above.

Each respondent shall attach a certificate to the sealed envelope, certifying that these are all the expunged records; and the Department of Public Safety shall also certify that it has requested the FBI and all other central depositories to return all records and files subject to the order of expunction.

If returning records expunged by this order is impracticable, records pertaining to

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this arrest may be expunged by the record keeping agency obliterating or destroying the records as they apply to this arrest. The agency shall then send a certificate to the District Clerk's Office certifying that the records have been destroyed.

VI.

The clerk shall certify when the order is final and shall mail certified copies of it:

By ordinary first class mail to Petitioner; and

By certified mail, return receipt requested, to all other respondents.

No respondent shall comply with this order until it has been thus served.

Upon request of Petitioner, the District Clerk may release any records returned pursuant to this order to the Petitioner.

The District Clerk shall maintain any and all records returned pursuant to this order in a manner not subject to public view and destroy all records, including the expunction file, not earlier than the 60th day after the date the order of expunction is issued or later than the first anniversary of that date unless the records were released to Petitioner. Destruction of any records pursuant to this order must comply with the procedures in Article 55.02, Section 5 of the Texas Code of Criminal Procedure.

The District Clerk shall certify to the Court the destruction of any records returned pursuant to this order.

All relief not expressly granted herein is hereby DENIED.

SIGNED AND ENTERED this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
JUDGE PRESIDING

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CERTIFICATE OF FINALITY

I, \_\_\_\_\_, District Clerk of Texas County, Texas, do hereby certify that I have custody of the official records of JOHN Q. PUBLIC in Texas County. After conducting a diligent search, no record or entry of any instrument filed within thirty days after the date of signing of the foregoing Order is found to exist in the records of my office pertaining to the above-styled and numbered cause.

WITNESS my hand and seal of office on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
District Clerk  
Texas County, Texas

By: \_\_\_\_\_  
Deputy District Clerk

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**Cause No. 123-12345-2011**

**EX PARTE** § **IN THE 123RD**  
§ **DISTRICT COURT OF**  
**JOHN Q. PUBLIC** § **TEXAS COUNTY, TEXAS**

**PETITION FOR EXPUNCTION**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**COMES NOW** John Q. Public, Petitioner, and moves the Court to order the expunction of all criminal records and files pertaining to the arrest of Petitioner described below. In support whereof, Petitioner would show the following:

I.

Personal Information:

Name:	John Quincy Public
Race:	White
Sex:	Male
Date of Birth:	January 1, 1950
Driver's License Number:	TX 12345678
Social Security Number:	123-456-7890
Address at Time of Arrest:	123 Main Street Anytown, TX 12345

II.

Offense Information:

Offense Charged:	Driving While Intoxicated
Date of Offense:	January 1, 2000
Date of Arrest:	January 1, 2000
County of Arrest:	Texas County

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Municipality of Arrest: Anytown, Texas  
Arresting Agency: Anytown Police Department  
Cause Number: N/A (case not filed)  
Court of Offense: N/A (case not filed)

III.

Petitioner is entitled to an expunction of the above arrest because:

1. Petitioner was released and the charge, if any, has not resulted in a final conviction and is no longer pending, and there was no court-ordered community supervision under Article 42.12 of the Code of Criminal Procedure for any offense other than a Class C misdemeanor, and

**PICK ONLY ONE of the options below:**

2. No indictment or information charging Petitioner with the commission of a misdemeanor or felony has been presented arising out of this arrest, and the applicable waiting period has expired.

**OR:** An indictment or information charging Petitioner with the commission of a felony was presented arising out of this arrest, but it has been dismissed or quashed because the presentment was made because of mistake, false information or other similar reason indicating lack of probable cause at the time of the dismissal to believe Petitioner committed the offense, namely (**state mistake or reason indicating lack of probable cause**).

**OR:** The statute of limitations for this offense has expired.

IV.

Petitioner has reason to believe the following governmental agencies may have records or files pertaining to Petitioner in connection with the above arrest:

Anytown Police Dept.  
123 Police Way  
Anytown, Texas 12345

Texas County District Attorney  
123 Courthouse Road, Suite 100  
Anytown, Texas 12345

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Texas County Jail  
123 Jail Drive  
Anytown, Texas 12345

Texas County District Clerk  
123 Courthouse Road, Suite 200  
Anytown, Texas 12345

Texas County Clerk  
123 Courthouse Road, Suite 300  
Anytown, Texas 12345

Texas Department of Public Safety  
Attn: Expunctions  
P.O. Box 4143  
Austin, Texas 78765-4143  
*Individually and for the Federal Bureau of Investigation*

**WHEREFORE, PREMISES CONSIDERED,** Petitioner prays the Court set this matter for a hearing and, after reasonable notice to the parties, order records of the above arrest expunged pursuant to Chapter 55 of the Code of Criminal Procedure.

Respectfully submitted,

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Jane Doe  
Attorney for Petitioner  
State Bar No. 123456789  
123 Lawyer Road  
Anytown, Texas 12345  
(123) 456-7890  
(123) 456-0987 FAX

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**CERTIFICATE OF SERVICE**

I certify that a true copy of the Petition for Expunction has been mailed to the Texas County District Attorney's Office, 123 Courthouse Road, Suite 100, Anytown, Texas 12345, on this the \_\_\_\_\_ day of January, 2011.

\_\_\_\_\_  
Jane Doe

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**VERIFICATION**

BEFORE ME, the undersigned authority, personally appeared JOHN Q. PUBLIC, who, having been duly sworn, stated:

“My name is John Q. Public. I am the Petitioner in the above Petition for Expunction. I have read said Petition, and the facts therein are true and correct.”

\_\_\_\_\_  
John Q. Public

Sworn and subscribed to me on \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

**NOTICE OF HEARING**

Notice is hereby given that a hearing on this Petition for Expunction will be held on \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ in the 123rd Judicial District Court, Texas County, Texas.

Signed on \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Judge Presiding