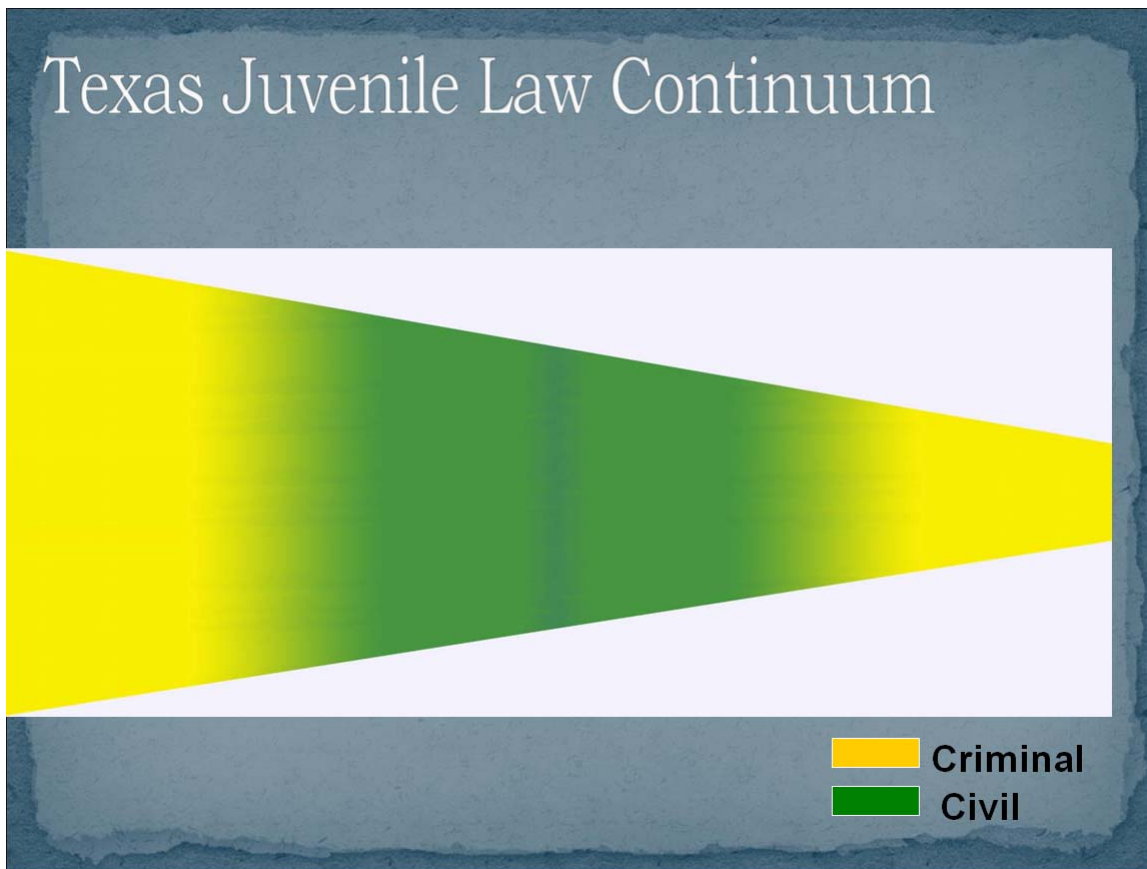


**Criminal Records and Expungement
Robert O. Dawson Juvenile Law Institute**

**22nd Annual Juvenile Law Conference
Houston, Texas
February 20, 2009**

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Fill in the Chart



What is Key for Juvenile Law Practitioners Seeking Expunction of Criminal Records?

Making Sense of Chapter 45

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.

COMMENTS/NOTES:

- “Child” defined per 51.02, Family Code:
 - Ages 10-16
 - 17 years of age or older and under 18, for acts committed under 17

(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.

COMMENTS/NOTES:

- Expunction ON or AFTER 17th birthday for
- Only **ONE (1)** “conviction” under sec. 8.07(a)(4) or (5) of the Penal Code
 - (a)(4) “misdemeanor punishable by fine only other than public intoxication”
 - (a)(5) “a violation of a penal ordinance of a political subdivision”
 - Note Dawson Tex. Juvenile Law 7th Ed. Page 612
 - DOES NOT apply to Traffic Offenses
- DOES NOT apply to cases that were dismissed by prosecution or where arrest was made but no charge filed

(c) The person must make a written request to have the records expunged. The request must be under oath.

COMMENTS/NOTES:

- The “person”
 - = the former child
 - = the former child's attorney?
- **MUST** make the Request
 - In Writing
 - 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.

COMMENTS/NOTES:

- Mandatory Content of the Request
 - person's statement (no particular form)
 - 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.
- In other words, the person was convicted of only one eligible penal offense

(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.

COMMENTS/NOTES:

- Judge's Duty to Inform of Expunction Rights
- Not Very Well Drafted Subsection
- Questions:
 - When is this to occur?
 - How do we "inform?"
 - Where is this to Occur? Open Court
 - Who is the "Person?"
 - Why do we require notice to the Parents?

(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.

COMMENTS/NOTES:

Section 12.03(C), Penal Code states that "Conviction of a Class C misdemeanor does not impose any legal disability or disadvantage."

(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.**

COMMENTS/NOTES:

- 45.0216 DOES NOT APPLY TO CONVICTIONS MOST “STATUS OFFENSES”:
 - Alcohol Offenses (Chapter 106, Alcoholic Beverage Code);
 - Tobacco Offenses (Chapter 161, Health and Safety Code); or
 - School Attendance Offenses (Section 25.094, Education Code)
- They Each have Their OWN SPECIFIC RULE
 - See TMCEC Juvenile/Minor Chart
 - [http://www.tmcec.com/tmcec/public/files/File/Resources/Charts/juvenile Minor05-06.pdf](http://www.tmcec.com/tmcec/public/files/File/Resources/Charts/juvenile%20Minor05-06.pdf)
 - They all essentially follow the “one conviction, one expunction rule”

(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.

COMMENTS/NOTES:

- Expunction of Two Types of Chapter 45 Probation
 - Deferred Disposition (Art. 45.051, CCP)
 - Teen Court (Art. 45.052, CCP)
- HOWEVER, this appears limited
 - Inapplicable to “Probated” ABC, HSC, & EC “Status Offenses”
 - Inapplicable to:
 - 8.07(a)(2), Penal Code – State Traffic
 - 8.07(a)(3), Penal code – Traffic Ordinances
- What is Left??????
 - Sec. 8.07(a)(4) or (5) of the Penal Code
 - (a)(4) “misdemeanor punishable by fine only other than public intoxication”
 - (a)(5) “a violation of a penal ordinance of a political subdivision”

(i) The justice or municipal court shall require a person who requests expungement under this article to pay a fee in the amount of \$30 to defray the cost of notifying state agencies of orders of expungement under this article.

(j) The procedures for expunction provided under this article are separate and distinct from the expunction procedures under Chapter 55.

COMMENTS/NOTES:

Chapter 55, CCP is utilized to expunge:

- Deferred Disposition for
 - The Previously Described Status Offenses
 - Traffic Offenses

(Contrast Art. 45.051(e), CCP with Art. 55.01(a)(2)(B) – Remember that Deferred Disposition is not Deferred Adjudication)

- Arrest Records and Other Related Records Stemming From Cases that were Initiated by Law Enforcement but Dismissed by Prosecution
- Acquittals
- Statute of Limitations

Other Statutes

§ 8.07. PENAL CODE - AGE AFFECTING CRIMINAL RESPONSIBILITY.

(a) A person may not be prosecuted for or convicted of any offense that the person committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that the person had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 729, Transportation Code, except for conduct for which the person convicted may be sentenced to imprisonment or confinement in jail;

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state;

(4) a misdemeanor punishable by fine only other than public intoxication;

(5) a violation of a penal ordinance of a political subdivision;

(6) a violation of a penal statute that is, or is a lesser included offense of, a capital felony, an aggravated controlled substance felony, or a felony of the first degree for which the person is transferred to the court under Section 54.02, Family Code, for prosecution if the person committed the offense when 14 years of age or older; or

(7) a capital felony or an offense under Section 19.02 for which the person is transferred to the court under Section 54.02(j)(2)(A), Family Code.

(b) Unless the juvenile court waives jurisdiction under Section 54.02, Family Code, and certifies the individual for criminal prosecution or the juvenile court has previously waived jurisdiction under that section and certified the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except an offense described by Subsections (a)(1)-(5).

(c) No person may, in any case, be punished by death for an offense committed while the person was younger than 18 years.

Expunction-Related Forms

The following Class C misdemeanor-related expunction forms are featured in the **2008 TMCEC Forms Book**. They are available for free-download at the TMCEC website.

The specific URL is:

<http://www.tmcec.com/tmcec/public/files/File/Resources/Final%20Website%20BenchBook.pdf> (Please note that the corresponding page number for each form on the list below is in **bold**).

Deferred Disposition and Teen Court

Application for Expunction: Deferred Disposition/Teen Court (Art. 45.0216(h), CCP) **129**

Order for Expunction of Records Deferred Disposition/Teen Court (Art. 45.0216(h), CCP) **130**

Alcoholic Beverage Code

Application for Expunction Alcoholic Beverage (Sec. 106.12, ABC) **213**

Order for Expunction of Records Alcoholic Beverage (Sec. 106.12, ABC) **214**

Failure to Attend School

Failure to Attend School Notice of Expunction Rights (Arts. 45.054(e) & 45.055, CCP) **216**

Application for Expunction Failure to Attend School (Art. 45.055, CCP) **217**

Order for Expunction of Records Failure to Attend School (Art. 45.055, CCP) **218**

Tobacco Offenses

Application for Expunction Tobacco Offenses (Sec. 161.255, HSC) **220**

Order for Expunction of Records Tobacco Offenses (Sec. 161.255, HSC) **221**

Penal Offenses

Official Notice of Expunction Rights: Penal Offenses/Deferred Disposition/
Teen Court **223**

Application for Expunction Penal Offenses (Art. 45.0216, CCP) **224**

Order for Expunction of Records Penal Offenses (Art. 45.0216, CCP) **225**

Failure to Attend School

Failure to Attend School Notice of Expunction Rights (Arts. 45.054(e) & 45.055,
CCP) **231**