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Editor's Comment: A Fresh Start - By Sarah Roland

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A new year. Another fresh start. It is hard to believe it's already 2020—nearly incomprehensible really. Everything happens so fast and yet also uncomfortably slow at times. We operate daily in a profession of "hurry up and wait." But it's the New Year that often helps us refocus on what is important in our lives, both professionally and personally. We all have new resolutions and goals for our lives. So, too, do our clients. So, we may be getting the phone calls about sealing and expunging records—so our clients can have a real fresh start.

Expunction is obviously the preferred course of action if a person is so entitled. See Tex. Code Crim. Proc. art. 55.01, et. seq. But if the person isn't entitled to have their record expunged, it may be that they can have it sealed. Because the Legislature radically expanded the sealing laws in 2017, it is worth a review of some of those laws. See Tex. Gov't Code sec. 411.071, et. seq. These laws—with the exception of automatic sealing—apply to an offense committed before, on, or after September 1, 2017.

- Automatic Nondisclosure (411.072)—applies to a person who receives a discharge and dismissal for certain nonviolent misdemeanors on or after September 1, 2017; has never before been convicted of or placed on deferred for another offense other than a traffic offense that is punishable by a fine only; is mandatory and does not require a petition, just a request; requires some evidence establishing that person is eligible (can be an affidavit from client); can happen as soon as 180 days from the date person placed on deferred; and is only a \$28 fee.
- Non-Automatic Nondisclosures (411.0725)—applies to a person otherwise ineligible for an automatic nondisclosure; and mandates a two-year wait for certain misdemeanors and five-year wait for felonies before filing; no requirement of no prior criminal history.
- Completion of Veterans Treatment Court (411.0729)—specifically applies to a person who completes a VTC program; applies regardless of whether the petitioner meets other eligibility criteria under the subchapter.
- Misdemeanor Convictions (411.073)—section applies to a person placed on straight probation for a misdemeanor (other than the regular disqualifiers); a person who has never been previously convicted of or placed on deferred adjudication for another offense other than a traffic offense that is punishable by fine only; not the result of a revocation; mandatory waiting period for certain enumerated misdemeanor offenses; if ineligible under 411.073, then may still be eligible under 411.0735. (Note: There is no provision that provides for sealing records for the successful completion of straight felony probation.)
- Deferred Probation in DWI Cases (411.0726)—there must be evidence in the petition that the person is

entitled to file a petition; no revocations; has never been previously convicted of or placed on deferred adjudication for another offense other than a traffic offense that is punishable by fine only; not eligible if evidence presented that offense involves car accident involving another person (not the driver/petitioner); two-year wait after discharge and dismissal.

- Probation in Certain DWI Cases (411.0731)?there must be evidence in the petition that the person is entitled to file a petition; no revocations; has never been previously convicted of or placed on deferred adjudication for another offense other than a traffic offense that is punishable by fine only; not eligible if evidence presented that offense involves car accident involving another person (not the driver/petitioner); two-year wait if interlock for six months; five-year wait if no interlock; may be eligible under 411.0736 if ineligible under this section

Of course, a petitioner under any section of the Government Code cannot have been in trouble for anything other than a traffic ticket during any applicable waiting period.

Importantly, Section 411.0755 explicitly states that the person who has obtained the nondisclosure is not required in any application for employment, information, or licensing to state that the person has been the subject of any criminal proceeding related to the information that is the subject of the order of nondisclosure. However, Section 411.0775 states that the criminal history record information that has been sealed may be admitted in trial during any subsequent offense if the information is admissible under the Rules of Evidence or disclosed to a prosecuting attorney for a criminal justice purpose.

The remainder of the sections detail the requirements for petitions and orders; they are substantive. Are you feeling overwhelmed about preparing a petition with all the (relatively) new nuances? Don't. The Office of Court Administration has a form petition and order for each type of nondisclosure at [\[3\]](https://www.txcourts.gov/rules-forms/orders-of-nondisclosure)
<https://www.txcourts.gov/rules-forms/orders-of-nondisclosure>.

Helping a client expunge or seal their record is a happy part of our job. There's no real risk involved and it's something the client wants. We could all use a fresh start every so often. So, let's be a part of helping our clients achieve their own fresh start.

P.S. ? You may notice a fresh, clean look to the *Voice* this year, too! We are always striving to improve and get you the best quality publication possible. We officially welcome Billy Huntsman as TCLDA's new communications director. Be sure to send your articles and let us know how we can continue to improve.

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