## Misidentification Victim Information Sheet

In 2003, the Texas Legislature amended the expunction statute to require the Harris County District Attorney to accept expunction applications from certain persons whose identities have been misappropriated. *See* Article 55.02, Section 2a(a), Texas Code of Criminal Procedure.

To be entitled to file an expunction application, an identity theft victim must show:

- (a) Information identifying the victim was falsely given by an arrestee as the arrested person's identifying information without the consent of the victim.
- (b) The only reason for the information identifying the victim being contained in the arrest records and files of an arrestee is that the information was falsely given by the arrestee as the arrestee's identifying information.

See Article 55.01(d), Texas Code of Criminal Procedure. In other words, a victim may seek an expunction only if his or her identifying information (*i.e.* name, address, date of birth, driver's license number or social security number) was actually used by a criminal arrestee.

The right to pursue an expunction through the District Attorney's Office **does not** include expunction of the following kinds of records:

- Misidentifications by third parties other than the arrestee. If, for example, a check verification company accuses the wrong Jane Doe of check fraud, the false information provided by the third party company does not give rise to a right of expunction through the District Attorney's Office. The falsely accused victim should file a "regular" expunction with the assistance of counsel or proceed on their own behalf.
- **Misidentifications by coincidence.** If there are two John Smiths born on January 1, 1980 in Houston, one of whom has a criminal record, the other John Smith does not have the right to seek expunction of his namesake's record, even if some identifiers coincide. Only if the criminal John Smith intentionally uses the non-criminal John Smith's other identifiers (SSN, DL, DOB, address) to avoid the consequences of his criminal record may an expunction be pursued.
- **Regular expunctions.** Except as authorized by law (as is the case for the misidentification petitioners), the District Attorney's Office cannot prepare a petition for a person seeking expunction of records. A person seeking expunction of their own arrest records must consult with their own attorney or proceed on their own behalf. A form pleading and guide to filing for expunctions is available from the District Attorney, however, upon request. The District Attorney will not provide any legal advice beyond those materials.
- **Typographical errors by a law enforcement agency**. Such errors should be corrected directly with the law enforcement agency itself.

To qualify for assistance by the District Attorney, a misidentification victim must have the following information (if available):

- An explanation, if any, of how the misidentification occurred. This includes:
  - o The relationship between the victim and the identity thief, if any.
  - O Any recent loss of identifying information (e.g. Social Security card, driver's license, mail, etc.)
  - O The manner in which the misidentification was discovered, either by the victim or by a third party (*e.g.* employer, landlord, law enforcement agency, bonding agency, etc.)
  - Other instances of misidentification outside of the law enforcement system (*e.g.* hot checks, credit applications, false identifications at a jobsite, etc.)
- Authenticated fingerprint records, AFIS (Automated Fingerprint Identification System) analysis, and a "not-me" letter related to the victim. These may be obtained from the Harris County Sheriff's Identification Division, 1301 Franklin.
- Background checks (certificates of disposition) for the victim and the arrestee (if known). These must be obtained from the Harris County District Clerk, 3rd Floor, 1201 Franklin for a one dollar fee per check.
- The victim's full name, sex, race, date of birth, driver's license number, social security number, address at the time that the person was arrested using the victim's information, and current phone number.
- The arrestee's date of arrest.
- The offense charged against the arrestee.
- The municipality or county in which the arrest occurred.
- The name of arresting agency.

**Please note**: The District Attorney understands if you do not have the preceding four items readily available. Please use reasonable diligence, however, in trying to locate this information. It is useful to provide the Sheriff's Special Person Number (SPN) for the arrestee if known.

Please use the attached form to provide this information. Upon completion of the form, please submit it by mail to:

District Attorney's Office 1201 Franklin, 6th Floor Houston, Texas 77002 Attn: General Litigation Division

or return it in person to the sixth floor receptionist for the District Attorney's Office, 1201 Franklin.

Generally, your application will be ready for your signature and sworn verification ten business days after your submission of the information. This office will call you when the expunction paperwork is ready. You will be notified by mail if your application is deficient or denied for any reason. Please do not call this office until ten business days have passed.

## Misidentification Victim Worksheet

Please complete  $\underline{all}$  of the following form. If you do not have information available to answer a particular question, please so indicate in the form.

I.	Eligibility to Seek Expunction		
A.	Did another person falsely use your name, address, date of birth, driver's license number, and/or social security number as his or her own identifying information when that person was <u>arrested</u> for a felony or misdemeanor?		
	YES / NO		
B.	Is there any other reason why your name, address, date of birth, driver's license number, and/or social security number are contained in the arrest records or files of the person arrested?		
	YES/ NO If YES, please explain:		
C.	Did you consent to the false use of your name, address, date of birth, driver's license and/or social security number by the arrested person?		
	YES/ NO		
II.	Details of Misidentification		
relati indiv disco ident	the explain in detail the circumstances of the theft of your identity. Please include any conship (e.g., familial, acquaintance, employment) between yourself and the arrested idual. Please explain, if you know, how your identity was stolen, and how you overed the theft of your identity. Please include all other instances in which your ity was misused by this person. More detail is better than less. Please attach tional pages if necessary.		

## **III.** Personal Information

A.	Please provid	e the following information about yourself:	
Full n	ame		
Sex		M/F	
Race			
Date	of birth	/	
	ess at time of ty theft		
	current ss and phone nu	umber	
B.	Please attach:		
•	Your authenticated fingerprint records, AFIS (Automated Fingerprin Identification System) analysis, and a "not-me" letter related to you. These may be obtained from the Harris County Sheriff's Identification Division, 130 Franklin.		
•	Background checks (certificates of disposition) for you and the identity thief (his or her true identity is known). These may be obtained from the Harris Count District Clerk, 1201 Franklin, 3rd Floor.		
•	A copy of you	ur driver's license.	
•	A copy of you	ur social security card.	
<b>IV.</b> perso	Arrestee's In who stole you	<b>nformation</b> – Please provide any information you know about the or identity.	
Full n	ame		
Sex Race SPN		M / F	
again	se charged st the arrestee ting agency		
Date of arrest Location of arrest		/	