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CLARK & TOWNE ATTORNEYS

June 2010

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"Nothing fixes a thing so intensely in memory as the wish to forget it."

— Montaigne

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Expungement, Explained

I get at least one call or email each day asking how to have a Georgia conviction expunged. Expungement is governed by state law, so if you have a conviction in another state, you have check the law in that state to see if your case qualifies for expungement there. In Georgia, expungement is the only legal method to completely remove an *arrest* from a criminal record. There are very few instances that qualify to have an arrest removed from your criminal history. Generally speaking, it is used only for arrests where charges are later dropped. Expungement is not used to remove convictions, nor is it used to remove charges that later lead to trials where the defendant is acquitted.

If your situation does qualify for expungement, the process is really just a lot of paper work and follow up. However, even if your arrest is expunged, anyone in the FBI, CIA, military or law enforcement will always see your complete criminal history.

The Georgia law covering expungement is too long to publish in full in this newsletter, but here is a summary of what you need to know:

You may qualify for expungement if:

- you were arrested, but the charge was dropped before the prosecutor filed an accusation in State or Superior Court or before the prosecutor filed an indictment in Superior Court; or
- the charge against you was, in fact, dropped

If this describes your situation, you may *ask* for your arrest to be removed from your criminal history. Meeting these first requirements does not mean that your record will necessarily be expunged, just that you qualify to ask.

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How to have your record expunged

To have an arrest expunged from your record, you must fill out the proper form and submit it to various authorities who must then complete other sections. The expungement form is available for free at the Georgia Department of Corrections website, but you will pay processing fees.

Filling out a form sounds easy, but this particular one takes a great deal of time and patience. Once you've filled out part one of the form, deliver the entire form to the police department where you were arrested and ask them to fill out part two. After the police fill out part two, they either send the form to the prosecutor or give it back to you to bring to the

prosecutor yourself. Each police department does this differently so remember to ask. The prosecuting attorney's office completes part three and mails the completed form to the Georgia Bureau of Investigation. With so many different offices handling your form, you should check periodically to make sure it isn't lost.

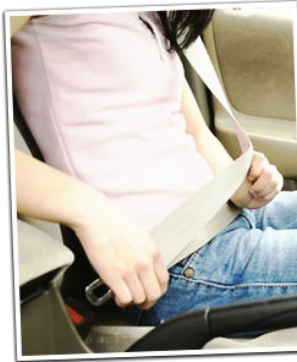
Just having your form in the system does not guarantee that your record will be expunged. Someone along the way may think you are not eligible for an expungement and deny your request. If you disagree, you can sue that agency in the local court. You will need a civil attorney at this point, who will probably charge a large fee. If all goes well, and no one denies your request, expect the whole process to take two to eight months.

Driving Safety Tip of the Month

Getting a driver's license is a rite of passage for our teens, and even for us parents. Although the requirements for getting a license have changed radically from when I was taking Driver's Ed., I've found most 15 year-olds can tell their parents all the new rules.

One thing that hasn't changed over the years is the difficulty of teaching someone to drive. Here are some tips from FearThis4Life.org:

- Where will your teen be driving? What safety considerations does this area involve? With your teen, look for driving hazards and review how to negotiate them safely.
- If you are teaching your teen to drive, make sure you teach them good road manners as well as letting them practice driving. Take



your time — lots of practice in an empty parking lot will pay off!

- Remember your teen in just that — a teenager. Your teen is still growing and maturing mentally and emotionally as well as physically. You gave them plenty of time to learn to walk; give them time now to learn to drive.
- Teach by example: practice good driving habits, courtesy on the road, and obey traffic rules!
- Enroll your teen in a hands-on advanced training course that teaches accident avoidance. Go to www.fearthis4life.org/ to see when the next local training course occurs.

TEENS & DRIVING

"IF YOU BELIEVE YOU MEET THE CRITERIA FOR AN EXPUNGEMENT, PLEASE CONSULT A QUALIFIED ATTORNEY."

Expungement, Explained

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You do not qualify for expungement if:

- you are arrested, charged and a jury acquits you (finds you not guilty);
- you are facing more than one criminal prosecution and the plea bargain is that you plead guilty to Case A and the prosecutor dismisses Case B, you cannot get Case B expunged;
- the police illegally obtain evidence against you in order to obtain an arrest warrant and the judge agrees that the evidence cannot be used to prosecute you;
- the crime victim refuses to testify and the case is dismissed because there is no other way to prove the case;
- you are incarcerated on other criminal charges and the prosecuting attorney

elects not to prosecute for reasons of judicial economy;

- if you successfully completed a pretrial diversion program, the terms of which did not specifically provide for expungement of the arrest record .

The Georgia Legislature is contemplating changes to these provisions in 2010. I'll be watching closely.



Ask Jessica Are parents responsible for teen driving violations?



Question: Is a parent responsible for the actions of a minor when the minor is violating driver's license restrictions?

Answer: Yes. All Georgia drivers under age 18 have a restricted, Class D license. This license is known as a "graduated license." By law, a Class D license means no driving between the hours of midnight and 6:00 a.m. unless the driver is either going to and from work, or going to and from any scheduled school event or going to and from an activity sponsored by a religious organization or as a result of medical emergency and no driving with more than three non-family passengers under the age of 21.

If your age 18 or younger driver is violating any of these conditions, and is involved in a traffic stop (whether that young driver is out with or without your permission), *you may be held civilly and criminally responsible for that driver's actions.* If you have a young driver in your family, carefully review the section of my website regarding teen drivers.

Make sure your teen driver goes to the Department of Driver Services on his or her 18th birthday to "upgrade" to a Class C license. Until your driver does this, the restrictions remain. If your son or

daughter has no license until his or her 18th birthday, that driver may immediately qualify for the Class C, but it may be wise to impose a parental restriction until you are certain your teen drives safely.

If your teen is stopped for one of these violations and is under age 17, your teen is a juvenile, and will be released to a parent's or guardian's custody. If the violation is serious, such as a DUI, hit and run, fleeing and eluding, your 17 or 18 year old is no longer a juvenile and may be arrested. You may be notified to retrieve the vehicle. Judges expect to see parents and guardians with their teens in court so that they are assured that the teen has informed the parents of the violation, and the parents won't be shocked when the next insurance bill becomes due. In actuality, judges like to see parents of all young drivers (except for emancipated teens who live on their own and are responsible for their own finances).

Young drivers: if you notice that midnight is approaching, and you are not going to make it home in time without speeding, stop and do the right thing. Your parents will be delighted to come and get you and your car so that you're not driving in violation of the license, you're not speeding and everyone makes it home safely.

"YOU MAY BE HELD CIVILLY AND CRIMINALLY RESPONSIBLE IF YOUR TEEN VIOLATES DRIVER'S LICENSE RESTRICTIONS!"

Thank You, Jessica

"Congratulations on a job well done! You are marvelous. As usual you have worked your magic and come up a winner. H and I thank you from the bottom of our hearts for helping us."

— DW

"Thank you so much for your help, Jessica. I just wanted to let you know about my case in Lilburn yesterday. I am excited about the outcome. Thank you for taking the time to help me."

— SJ

Thank You!

My Staff and I welcome the new clients who've joined the Clark & Towne family this past month, and we send our personal thanks to all those who referred friends and family and went out of their way to send notes of appreciation. Thanks also to all of you who took the time to request topics they would like to see addressed in this newsletter and on the clarktowne.com blog. Thank you and please, feel free to call the Office if we can be of help.

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We strongly believe that education is the first step in the prevention of any type of legal crisis. We've proudly worked to resolve our clients' dilemmas since 1990. We are in your community, have the experience and resources required to work toward your goals, and we're here to help. We also accept a limited number of injury cases each year resulting from serious auto, truck or motor-cycle accidents.

Do you need a referral?

Chances are we can refer you to an excellent local attorney outside our area of practice: Call us at 770.338.2338 or email jtowne@clarktowne.com.

This publication contains general information only. It is not intended to be legal advice. Every case is unique.

VOLUNTEER SPOTLIGHT: SAFERIDE AMERICA

SafeRide America, in business for eight years, is a driver-for-hire service that operates 7-days and nights a week all over the Metro Atlanta area.

SafeRide America is seeking volunteers to serve our community by making the roads safer for

everyone. We offer driving and non-driving opportunities 7 days a week, daytime, evenings and weekends. SafeRide America is a 501 (c) 3 non-profit organization and welcomes anyone needing to complete court appointed community service or just wants to help us proactively prevent impaired driving.

