

By: Geren

H.B. No. 1405

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the automatic expunction of arrest records and files
3 for certain public safety employees who successfully complete a
4 public safety employees treatment court program.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Article 55.01, Code of Criminal Procedure, is
7 amended by amending Subsection (a) and adding Subsection (a-5) to
8 read as follows:

9 (a) A person who has been placed under a custodial or
10 noncustodial arrest for commission of either a felony or
11 misdemeanor is entitled to have all records and files relating to
12 the arrest expunged if:

13 (1) the person is tried for the offense for which the
14 person was arrested and is:

15 (A) acquitted by the trial court, except as
16 provided by Subsection (c);

17 (B) convicted and subsequently:

18 (i) pardoned for a reason other than that
19 described by Subparagraph (ii); or

20 (ii) pardoned or otherwise granted relief
21 on the basis of actual innocence with respect to that offense, if
22 the applicable pardon or court order clearly indicates on its face
23 that the pardon or order was granted or rendered on the basis of the
24 person's actual innocence; or

1 (C) convicted of an offense committed before
2 September 1, 2021, under Section 46.02(a), Penal Code, as that
3 section existed before that date; or

4 (2) the person has been released and the charge, if
5 any, has not resulted in a final conviction and is no longer pending
6 and there was no court-ordered community supervision under Chapter
7 42A for the offense, unless the offense is a Class C misdemeanor,
8 provided that:

9 (A) regardless of whether any statute of
10 limitations exists for the offense and whether any limitations
11 period for the offense has expired, an indictment or information
12 charging the person with the commission of a misdemeanor offense
13 based on the person's arrest or charging the person with the
14 commission of any felony offense arising out of the same
15 transaction for which the person was arrested:

16 (i) has not been presented against the
17 person at any time following the arrest, and:

18 (a) at least 180 days have elapsed
19 from the date of arrest if the arrest for which the expunction was
20 sought was for an offense punishable as a Class C misdemeanor and if
21 there was no felony charge arising out of the same transaction for
22 which the person was arrested;

23 (b) at least one year has elapsed from
24 the date of arrest if the arrest for which the expunction was sought
25 was for an offense punishable as a Class B or A misdemeanor and if
26 there was no felony charge arising out of the same transaction for
27 which the person was arrested;

1 (c) at least three years have elapsed
2 from the date of arrest if the arrest for which the expunction was
3 sought was for an offense punishable as a felony or if there was a
4 felony charge arising out of the same transaction for which the
5 person was arrested; or

6 (d) the attorney representing the
7 state certifies that the applicable arrest records and files are
8 not needed for use in any criminal investigation or prosecution,
9 including an investigation or prosecution of another person; or

10 (ii) if presented at any time following the
11 arrest, was dismissed or quashed, and the court finds that the
12 indictment or information was dismissed or quashed because:

13 (a) the person completed a veterans
14 treatment court program created under Chapter 124, Government Code,
15 or former law, subject to Subsection (a-3);

16 (b) the person completed a mental
17 health court program created under Chapter 125, Government Code, or
18 former law, subject to Subsection (a-4);

19 (c) the person completed a public
20 safety employees treatment court program created under Chapter 129,
21 Government Code, subject to Subsection (a-5);

22 (d) the person completed a pretrial
23 intervention program authorized under Section 76.011, Government
24 Code, other than a veterans treatment court program created under
25 Chapter 124, Government Code, or former law, [~~or~~] a mental health
26 court program created under Chapter 125, Government Code, or former
27 law, or a public safety employees treatment court program created

1 under Chapter 129, Government Code;

2 (e) [~~(d)~~] the presentment had been
3 made because of mistake, false information, or other similar reason
4 indicating absence of probable cause at the time of the dismissal to
5 believe the person committed the offense; or

6 (f) [~~(e)~~] the indictment or
7 information was void; or

8 (B) prosecution of the person for the offense for
9 which the person was arrested is no longer possible because the
10 limitations period has expired.

11 (a-5) A person is eligible under Subsection
12 (a)(2)(A)(ii)(c) for an expunction of arrest records and files only
13 if:

14 (1) the person has not previously received an
15 expunction of arrest records and files under that sub-subparagraph;
16 and

17 (2) the person submits to the court an affidavit
18 attesting to that fact.

19 SECTION 2. Section 1a, Article 55.02, Code of Criminal
20 Procedure, is amended by adding Subsection (a-3) to read as
21 follows:

22 (a-3) A trial court dismissing a case following a person's
23 successful completion of a public safety employees treatment court
24 program created under Chapter 129, Government Code, if the trial
25 court is a district court, or a district court in the county in
26 which the trial court is located may, with the consent of the
27 attorney representing the state, enter an order of expunction for a

1 person entitled to expunction under Article 55.01(a)(2)(A)(ii)(c)
2 not later than the 30th day after the date the court dismisses the
3 case or receives the information regarding that dismissal, as
4 applicable. Notwithstanding any other law, a court that enters an
5 order for expunction under this subsection may not charge any fee or
6 assess any cost for the expunction.

7 SECTION 3. Article 102.006(b-1), Code of Criminal
8 Procedure, is amended to read as follows:

9 (b-1) The fees under Subsection (a) shall be waived if the
10 petitioner is entitled to expunction:

11 (1) under Article 55.01(a)(2)(A)(ii)(a) after
12 successful completion of a veterans treatment court program created
13 under Chapter 124, Government Code, or former law; ~~or~~

14 (2) under Article 55.01(a)(2)(A)(ii)(b) after
15 successful completion of a mental health court program created
16 under Chapter 125, Government Code, or former law; or

17 (3) under Article 55.01(a)(2)(A)(ii)(c) after
18 successful completion of a public safety employees treatment court
19 program created under Chapter 129, Government Code.

20 SECTION 4. Section 129.002(b), Government Code, is amended
21 to read as follows:

22 (b) If a defendant successfully completes a public safety
23 employees treatment court program, after notice to the attorney
24 representing the state and a hearing in the public safety employees
25 treatment court at which that court determines that a dismissal is
26 in the best interest of justice, the public safety employees
27 treatment court shall provide to the court in which the criminal

1 case is pending information about the dismissal and shall include
2 all of the information required about the defendant for a petition
3 for expunction under Section 2(b), Article 55.02, Code of Criminal
4 Procedure. The court in which the criminal case is pending shall
5 dismiss the case against the defendant and:

6 (1) if that trial court is a district court, the court
7 may, with the consent of the attorney representing the state, enter
8 an order of expunction on behalf of the defendant under Section
9 1a(a-3), Article 55.02, Code of Criminal Procedure; or

10 (2) if that trial court is not a district court, the
11 court may, with the consent of the attorney representing the state,
12 forward the appropriate dismissal and expunction information to
13 enable a district court with jurisdiction to enter an order of
14 expunction on behalf of the defendant under Section 1a(a-3),
15 Article 55.02, Code of Criminal Procedure.

16 SECTION 5. (a) Except as provided by Subsection (b) of this
17 section, this Act applies to the expunction of arrest records and
18 files for a person who successfully completes a public safety
19 employees treatment court program under Chapter 129, Government
20 Code, before, on, or after the effective date of this Act,
21 regardless of when the underlying arrest occurred.

22 (b) The change in law made by this Act to Article 102.006,
23 Code of Criminal Procedure, applies to the fees charged or costs
24 assessed for an expunction order entered on or after the effective
25 date of this Act, regardless of whether the underlying arrest
26 occurred before, on, or after the effective date of this Act.

27 (c) For a person who is entitled to expunction under Article

1 55.01(a)(2)(A)(ii)(c), Code of Criminal Procedure, as amended by
2 this Act, based on a successful completion of a public safety
3 employees treatment court program under Chapter 129, Government
4 Code, before the effective date of this Act, notwithstanding the
5 30-day time limit provided for the court to enter an automatic order
6 of expunction under Section 1a(a-3), Article 55.02, Code of
7 Criminal Procedure, as added by this Act, the court may, with the
8 consent of the attorney representing the state, enter an order of
9 expunction for the person as soon as practicable after the court
10 receives written notice from any party to the case about the
11 person's entitlement to the expunction.

12 SECTION 6. This Act takes effect September 1, 2023.