

By: Dutton

H.B. No. 384

A BILL TO BE ENTITLED

AN ACT

relating to the automatic expunction of criminal records.

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

SECTION 1. Article 55.01(a), Code of Criminal Procedure, is amended to read as follows:

(a) A person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

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

(A) acquitted by the trial court, except as provided by Subsection (c) of this section; or

(B) convicted and subsequently pardoned; or

(2) either ~~each~~ of the following conditions exists ~~exist~~:

(A) an indictment, complaint, or information charging the person with commission of an offense ~~a felony~~ has not been presented against the person for an offense arising out of the transaction for which the person was arrested before the second anniversary of the date of the arrest; or

(B) [7] if an indictment, complaint, or information charging the person with commission of an offense ~~a felony~~ was presented, the indictment, complaint, or information has been dismissed or quashed~~[7 and]~~

1                   ~~[(i) the limitations period expired before~~  
2 ~~the date on which a petition for expunction was filed under Article~~  
3 ~~55.02; or~~

4                   ~~[(ii) the court finds that the indictment~~  
5 ~~or information was dismissed or quashed because the presentment had~~  
6 ~~been made because of mistake, false information, or other similar~~  
7 ~~reason indicating absence of probable cause at the time of the~~  
8 ~~dismissal to believe the person committed the offense or because it~~  
9 ~~was void;~~

10                   ~~[(B) the person has been released and the charge,~~  
11 ~~if any, has not resulted in a final conviction and is no longer~~  
12 ~~pending and there was no court ordered community supervision under~~  
13 ~~Article 42.12; and~~

14                   ~~[(C) the person has not been convicted of a~~  
15 ~~felony in the five years preceding the date of the arrest].~~

16           SECTION 2. Section 1, Article 55.02, Code of Criminal  
17 Procedure, is amended to read as follows:

18           Sec. 1. (a) The ~~[At the request of the defendant and after~~  
19 ~~notice to the state and a hearing, the]~~ trial court ~~[presiding over~~  
20 ~~the case in which the defendant was acquitted]~~ shall enter an order  
21 of expunction for a person entitled to expunction because:

22                   (1) the person was acquitted;

23                   (2) the person was pardoned; or

24                   (3) the offense was dismissed ~~[under Article~~  
25 ~~55.01(a)(1)(A) not later than the 30th day after the date of the~~  
26 ~~acquittal. Upon acquittal, the court shall advise the defendant of~~  
27 ~~the right to expunction. The defendant shall provide to the court~~

1 ~~all of the information required in a petition for expunction under~~  
2 ~~Section 2(b)].~~

3 (b) The attorney representing the state whose office would  
4 have prosecuted the offense shall bring a motion for expunction for  
5 a person who was arrested but against whom an indictment,  
6 complaint, or information is not filed before the second  
7 anniversary of the date of arrest.

8 (c) The court shall enter an order of expunction under this  
9 section not later than the 30th day after the date of acquittal,  
10 pardon, dismissal, or filing of the motion by the attorney  
11 representing the state. The court shall include in the order a  
12 listing of each official, agency, or other entity of this state or  
13 political subdivision of this state that there is reason to believe  
14 has any record or file that is subject to the order.

15 SECTION 3. Section 2, Article 55.02, Code of Criminal  
16 Procedure, is amended to read as follows:

17 Sec. 2. (a) A person who is entitled to expunction of  
18 identifying information contained in records and files under  
19 Article [~~55.01(a)(1)(B), 55.01(a)(2), or~~] 55.01(d) [~~or a person who~~  
20 ~~is eligible for expunction of records and files under Article~~  
21 ~~55.01(b)] may file an ex parte petition for expunction in a district  
22 court for the county in which:~~

23 (1) [~~the petitioner was arrested,~~  
24 [~~2~~] the person who falsely identified himself or  
25 herself as the petitioner was arrested[, ~~if the petitioner relies~~  
26 ~~on an entitlement under Article 55.01(d)]]; or~~

27 (2) [~~3~~] the offense was alleged to have occurred.

1 (b) The petition must be verified and shall include the  
2 following or an explanation for why one or more of the following is  
3 not included:

4 (1) the petitioner's:

5 (A) full name;

6 (B) sex;

7 (C) race;

8 (D) date of birth;

9 (E) driver's license number;

10 (F) social security number; and

11 (G) address at the time of the arrest of the  
12 person who falsely identified himself or herself as the petitioner;

13 (2) the full name of the person arrested;

14 (3) the offense charged against the [~~petitioner or~~  
15 ~~the~~] person arrested and [~~described by Subsection (a)(2),~~

16 [~~(3)] the date that~~ that [~~the~~] offense [~~charged against the~~  
17 ~~petitioner or the person described by Subsection (a)(2)] was  
18 alleged to have been committed;~~

19 (4) the date of arrest [~~the petitioner or the person~~  
20 ~~described by Subsection (a)(2) was arrested];~~

21 (5) the name of the county and the municipality,  
22 [~~where the petitioner or the person described by Subsection (a)(2)~~  
23 ~~was arrested and~~] if the arrest occurred in a municipality, in which  
24 the arrest occurred [~~the name of the municipality];~~

25 (6) the name of the arresting agency [~~that arrested~~  
26 ~~the petitioner or the person described by Subsection (a)(2)];~~

27 (7) the case number and court of offense; [~~and~~]

1           (8) authenticated fingerprint records of the  
2 petitioner;

3           (9) a statement that:

4                   (A) the petitioner is not the person arrested and  
5 for whom the arrest records and files were created; and

6                   (B) the petitioner did not give the person  
7 arrested consent to falsely identify himself or herself as the  
8 petitioner; and

9           (10) a list of all law enforcement agencies, jails or  
10 other detention facilities, magistrates, courts, prosecuting  
11 attorneys, correctional facilities, central state depositories of  
12 criminal records, and other officials or agencies or other entities  
13 of this state or of any political subdivision of this state and of  
14 all central federal depositories of criminal records that the  
15 petitioner has reason to believe have records or files that are  
16 subject to expunction.

17           (c) The court shall set a hearing on the matter no sooner  
18 than thirty days from the filing of the petition and shall give  
19 reasonable notice of the hearing to each official or agency or other  
20 entity named in the petition by certified mail, return receipt  
21 requested. The agency or [~~, and such~~] entity may be represented by  
22 the attorney responsible for providing that [~~such~~] agency or entity  
23 with legal representation in other matters.

24           (d) If the court finds that the petitioner is entitled to  
25 expunction of identifying information contained in any records and  
26 files that are the subject of the petition, it shall enter an order  
27 directing expunction.

1           ~~[(c) In addition to the information required by Subsection~~  
2 ~~(b), if the petitioner relies on an entitlement to expunction under~~  
3 ~~Article 55.01(d), the verified petition must include authenticated~~  
4 ~~fingerprint records of the petitioner and must include the~~  
5 ~~following or a statement explaining the reason the following is not~~  
6 ~~included:~~

7                     ~~[(1) the full name of the person arrested, and~~

8                     ~~[(2) a statement that:~~

9                             ~~[(A) the petitioner is not the person arrested~~  
10 ~~and for whom the arrest records and files were created; and~~

11                            ~~[(B) the petitioner did not give the person~~  
12 ~~arrested consent to falsely identify himself or herself as the~~  
13 ~~petitioner.]~~

14           SECTION 4. Sections 3(a) and (c), Article 55.02, Code of  
15 Criminal Procedure, are amended to read as follows:

16           (a) In an order of expunction issued under this article, the  
17 trial court shall require any state agency that sent information  
18 concerning the arrest to a central federal depository to request  
19 the ~~[such]~~ depository to return all records and files subject to the  
20 order of expunction. The person who is the subject of an ~~[the]~~  
21 expunction order under Section 2, or an agency protesting the  
22 expunction, may appeal the court's decision in the same manner as in  
23 other civil cases.

24           (c) When the order of expunction is final, the clerk of the  
25 court shall send a certified copy of the order by certified mail,  
26 return receipt requested, to the Crime Records Service of the  
27 Department of Public Safety and by hand delivery or certified mail,

1 return receipt requested, to each official or agency or other  
2 entity of this state or of any political subdivision of this state  
3 named in [~~designated by the person who is the subject of~~] the order.  
4 The clerk of the court must receive a receipt for each order  
5 delivered by hand under this subsection. The Department of Public  
6 Safety shall notify any central federal depository of criminal  
7 records by any means, including electronic transmission, of the  
8 order with an explanation of the effect of the order and a request  
9 that the records in possession of the depository, including any  
10 information with respect to the order, be destroyed or returned to  
11 the court.

12 SECTION 5. Section 4, Article 55.02, Code of Criminal  
13 Procedure, is amended to read as follows:

14 Sec. 4. (a) If the state establishes that the person who is  
15 the subject of an expunction order is still subject to conviction  
16 for an offense arising out of the transaction for which the person  
17 was arrested because the statute of limitations has not run and  
18 there is reasonable cause to believe that the state may proceed  
19 against the person for the offense, the court may provide in its  
20 order that the law enforcement agency and the prosecuting attorney  
21 responsible for investigating the offense may retain any records  
22 and files that are necessary to the investigation.

23 (b) In the case of a person who is the subject of an  
24 expunction order on the basis of an acquittal, the court may provide  
25 in the expunction order that the law enforcement agency and the  
26 prosecuting attorney retain records and files if:

27 (1) the records and files are necessary to conduct a

1 subsequent investigation and prosecution of a person other than the  
2 person who is the subject of the expunction order; or

3 (2) the state establishes that the records and files  
4 are necessary for use in:

5 (A) another criminal case, including a  
6 prosecution, motion to adjudicate or revoke community supervision,  
7 parole revocation hearing, mandatory supervision revocation  
8 hearing, punishment hearing, or bond hearing; or

9 (B) a civil case, including a civil suit or suit  
10 for possession of or access to a child.

11 (c) [~~(b)~~] Unless the person who is the subject of the  
12 expunction order is again arrested for or charged with an offense  
13 arising out of the transaction for which the person was arrested or  
14 unless the court provides for the retention of records and files  
15 under Subsection (b) [~~Subsection (a)~~] of this section, [~~the~~  
16 ~~provisions of~~] Articles 55.03 and 55.04 of this code apply to files  
17 and records retained under this section.

18 SECTION 6. Section 5(c), Article 55.02, Code of Criminal  
19 Procedure, is amended to read as follows:

20 (c) Except in the case of a person who is the subject of an  
21 expunction order based on an entitlement under Article 55.01(d), if  
22 an order of expunction is issued under this article, the court  
23 records concerning expunction proceedings are not open for  
24 inspection by anyone except the person who is the subject of the  
25 order unless the order permits retention of a record under Section  
26 4(a) [~~Section 4~~] of this article and the person is again arrested  
27 for or charged with an offense arising out of the transaction for



1 which the person was arrested or unless the court provides for the  
2 retention of records and files under Section 4(b) [~~Section 4(a)~~] of  
3 this article. The clerk of the court issuing the order shall  
4 obliterate all public references to the proceeding and maintain the  
5 files or other records in an area not open to inspection.

6 SECTION 7. Articles 55.05 and 102.006, Code of Criminal  
7 Procedure, are repealed.

8 SECTION 8. (a) This Act takes effect September 1, 2003, and  
9 applies only to the expunction of arrest records related to:

10 (1) a criminal offense for which an acquittal occurred  
11 on or after that date;

12 (2) a charge for an offense that was dismissed on or  
13 after that date; or

14 (3) an arrest made on or after that date.

15 (b) Expunction for an acquittal, dismissal, or arrest that  
16 occurred before the effective date of this Act is governed by the  
17 law in effect at that time, and the former law is continued in  
18 effect for that purpose.