

AN ACT

relating to restrictions on the disclosure of certain criminal records and to the duty of law enforcement agencies regarding records associated with certain defendants receiving deferred adjudication; providing a civil penalty.

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

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

(a) A person who has been placed under a custodial or noncustodial arrest [~~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) each of the following conditions exist:

(A) an indictment or information charging the person with commission of a felony has not been presented against the person for an offense arising out of the transaction for which the person was arrested or, if an indictment or information charging the person with commission of a felony was presented, the indictment or information has been dismissed or quashed, 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 or
5 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 for any offense other than a Class C misdemeanor; and

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

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

18 (a) A person who is entitled to expunction of records and
19 files under Article 55.01(a) or (d) [~~55.01(a)(1)(B), 55.01(a)(2),~~
20 ~~or 55.01(d)~~] or a person who is eligible for expunction of records
21 and files under Article 55.01(b) may file an ex parte petition for
22 expunction in a district 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 on
26 an entitlement under Article 55.01(d); or

27 (3) the offense was alleged to have occurred.

1 SECTION 3. Article 55.03, Code of Criminal Procedure, is
2 amended to read as follows:

3 Art. 55.03. EFFECT OF EXPUNCTION. When the order of
4 expunction is final:

5 (1) the release, dissemination, or use of the expunged
6 records and files for any purpose other than a purpose described by
7 Section 411.083(a) or (b)(1), (2), or (3), Government Code, is
8 prohibited;

9 (2) except as provided in Subdivision 3 of this
10 article, the person arrested may deny the occurrence of the arrest
11 and the existence of the expunction order; and

12 (3) the person arrested or any other person, when
13 questioned under oath in a criminal proceeding about an arrest for
14 which the records have been expunged, may state only that the matter
15 in question has been expunged.

16 SECTION 4. Section 411.081, Government Code, is amended by
17 adding Subsections (d) through (h) to read as follows:

18 (d) Notwithstanding any other provision of this subchapter,
19 if a person is placed on deferred adjudication community
20 supervision under Section 5, Article 42.12, Code of Criminal
21 Procedure, subsequently receives a discharge and dismissal under
22 Section 5(c), Article 42.12, and satisfies the requirements of
23 Subsection (e), the person may petition the court that placed the
24 defendant on deferred adjudication for an order of nondisclosure
25 under this subsection. After notice to the state and a hearing on
26 whether the person is entitled to file the petition and issuance of
27 the order is in the best interest of justice, the court shall issue

1 an order prohibiting criminal justice agencies from disclosing to
2 the public criminal history record information related to the
3 offense giving rise to the deferred adjudication. A criminal
4 justice agency may disclose criminal history record information
5 that is the subject of the order to an individual or agency
6 described by Section 411.083(b)(1), (2), or (3). A person may
7 petition the court for an order of nondisclosure on payment of a \$28
8 fee to the clerk of the court. The payment may be made only on or
9 after:

10 (1) the discharge and dismissal, if the offense for
11 which the person was placed on deferred adjudication was a
12 misdemeanor other than a misdemeanor described by Subdivision (2);

13 (2) the fifth anniversary of the discharge and
14 dismissal, if the offense for which the person was placed on
15 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,
16 25, 42, or 46, Penal Code; or

17 (3) the 10th anniversary of the discharge and
18 dismissal, if the offense for which the person was placed on
19 deferred adjudication was a felony.

20 (e) A person is entitled to petition the court under
21 Subsection (d) only if during the applicable period described by
22 Subsection (d)(1), (2), or (3), as appropriate, the person is not
23 convicted of or placed on deferred adjudication community
24 supervision under Section 5, Article 42.12, Code of Criminal
25 Procedure, for any offense other than an offense under the
26 Transportation Code punishable by fine only. A person is not
27 entitled to petition the court under Subsection (d) if the person

1 has been previously convicted or placed on deferred adjudication
2 for:

3 (1) an offense requiring registration as a sex
4 offender under Chapter 62, Code of Criminal Procedure;

5 (2) an offense under Section 20.04, Penal Code,
6 regardless of whether the offense is a reportable conviction or
7 adjudication for purposes of Chapter 62, Code of Criminal
8 Procedure;

9 (3) an offense under Section 19.02, 19.03, 22.04,
10 22.041, 25.07, or 42.072, Penal Code; or

11 (4) any other offense involving family violence, as
12 defined by Section 71.004, Family Code.

13 (f) For purposes of Subsection (d), a person is considered
14 to have been placed on deferred adjudication community supervision
15 if, regardless of the statutory authorization:

16 (1) the person entered a plea of guilty or nolo
17 contendere;

18 (2) the judge deferred further proceedings without
19 entering an adjudication of guilt and placed the person under the
20 supervision of the court or an officer under the supervision of the
21 court; and

22 (3) at the end of the period of supervision the judge
23 dismissed the proceedings and discharged the person.

24 (g) When an order of nondisclosure is issued under this
25 subsection, the clerk of the court shall send a copy of the order by
26 certified mail, return receipt requested, to the Crime Records
27 Service of the Department of Public Safety. The Department of

1 Public Safety shall send a copy of the order by mail or electronic
2 means to all law enforcement agencies, jails or other detention
3 facilities, magistrates, courts, prosecuting attorneys,
4 correctional facilities, central state depositories of criminal
5 records, and other officials or agencies or other entities of this
6 state or of any political subdivision of this state, and to all
7 central federal depositories of criminal records that there is
8 reason to believe have criminal history record information that is
9 the subject of the order.

10 (h) The clerk of a court that collects a fee under
11 Subsection (d) shall remit the fee to the comptroller not later than
12 the last day of the month following the end of the calendar quarter
13 in which the fee is collected, and the comptroller shall deposit the
14 fee in the general revenue fund. The Department of Public Safety
15 shall submit a report to the legislature not later than December 1
16 of each even-numbered year that includes information on:

17 (1) the number of petitions for nondisclosure and
18 orders of nondisclosure received by the department in each of the
19 previous two years;

20 (2) the actions taken by the department with respect
21 to the petitions and orders received; and

22 (3) the costs incurred by the department in taking
23 those actions.

24 SECTION 5. Subchapter C, Chapter 552, Government Code, is
25 amended by adding Sections 552.142 and 552.1425 to read as follows:

26 Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED
27 ADJUDICATIONS. (a) Information is excepted from the requirements

1 of Section 552.021 if an order of nondisclosure with respect to the
2 information has been issued under Section 411.081(d).

3 (b) A person who is the subject of information that is
4 excepted from the requirements of Section 552.021 under this
5 section may deny the occurrence of the arrest and prosecution to
6 which the information relates and the exception of the information
7 under this section, unless the information is being used against
8 the person in a subsequent criminal proceeding.

9 Sec. 552.1425. CIVIL PENALTY: RECORDS OF CERTAIN DEFERRED
10 ADJUDICATIONS. (a) A private entity that compiles and
11 disseminates for compensation criminal history record information
12 may not compile or disseminate information with respect to which an
13 order of nondisclosure has been issued under Section 411.081(d).

14 (b) A district court may issue a warning to a private entity
15 for a first violation of Subsection (a). After receiving a warning
16 for the first violation, the private entity is liable to the state
17 for a civil penalty not to exceed \$500 for each subsequent
18 violation.

19 (c) The attorney general or an appropriate prosecuting
20 attorney may sue to collect a civil penalty under this section.

21 (d) A civil penalty collected under this section shall be
22 deposited in the state treasury to the credit of the general revenue
23 fund.

24 SECTION 6. (a) This Act takes effect September 1, 2003.

25 (b) The changes in law made by this Act to Chapter 55, Code
26 of Criminal Procedure, apply to a person seeking expunction of
27 records and files relating to an arrest regardless of whether the

1 arrest occurred before, on, or after the effective date of this Act.

2 (c) The changes in law made by this Act to Section 411.081,
3 Government Code, as amended by this Act, and Sections 552.142 and
4 552.1425, Government Code, as added by this Act, apply to
5 information related to a deferred adjudication or similar procedure
6 described by Subsection (f), Section 411.081, Government Code, as
7 added by this Act, regardless of whether the deferred adjudication
8 or procedure is entered before, on, or after the effective date of
9 this Act.

10 (d) The Department of Public Safety of the State of Texas
11 shall submit its first report to the legislature as required by
12 Subsection (h), Section 411.081, as added by this Act, not later
13 than December 1, 2004.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1477 passed the Senate on May 20, 2003, by a viva-voce vote; and that the Senate concurred in House amendment on May 31, 2003, by a viva-voce vote.

Secretary of the Senate

I hereby certify that S.B. No. 1477 passed the House, with amendment, on May 28, 2003, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor