

By: West

S.B. No. 1477

A BILL TO BE ENTITLED

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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 person may  
4 petition the court for an order of nondisclosure on payment of a \$28  
5 fee to the clerk of the court. The payment may be made only on or  
6 after:

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

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

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

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

27 (1) an offense requiring registration as a sex

1 offender under Chapter 62, Code of Criminal Procedure;

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

6 (3) an offense under Section 19.02, 19.03, 22.04,  
7 22.041, 25.07, or 42.072, Penal Code; or

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

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

13 (1) the person entered a plea of guilty or nolo  
14 contendere;

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

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

21 (g) When an order of nondisclosure is issued under this  
22 subsection, the clerk of the court shall send a copy of the order by  
23 certified mail, return receipt requested, to the Crime Records  
24 Service of the Department of Public Safety. The Department of  
25 Public Safety shall send a copy of the order by mail or electronic  
26 means to all law enforcement agencies, jails or other detention  
27 facilities, magistrates, courts, prosecuting attorneys,

1 correctional facilities, central state depositories of criminal  
2 records, and other officials or agencies or other entities of this  
3 state or of any political subdivision of this state, and to all  
4 central federal depositories of criminal records that there is  
5 reason to believe have criminal history record information that is  
6 the subject of the order.

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

14 (1) the number of petitions for nondisclosure and  
15 orders of nondisclosure received by the department in each of the  
16 previous two years;

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

19 (3) the costs incurred by the department in taking  
20 those actions.

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

23 Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED  
24 ADJUDICATIONS. (a) Information is excepted from the requirements  
25 of Section 552.021 if an order of nondisclosure with respect to the  
26 information has been issued under Section 411.081(d).

27 (b) A person who is the subject of information that is

1 excepted from the requirements of Section 552.021 under this  
2 section may deny the occurrence of the arrest and prosecution to  
3 which the information relates and the exception of the information  
4 under this section, unless the information is being used against  
5 the person in a subsequent criminal proceeding.

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

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

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

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

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

22 (b) The changes in law made by this Act to Chapter 55, Code  
23 of Criminal Procedure, apply to a person seeking expunction of  
24 records and files relating to an arrest regardless of whether the  
25 arrest occurred before, on, or after the effective date of this Act.

26 (c) The changes in law made by this Act to Section 411.081,  
27 Government Code, as amended by this Act, and Sections 552.142 and

1 552.1425, Government Code, as added by this Act, apply to  
2 information related to a deferred adjudication or similar procedure  
3 described by Subsection (f), Section 411.081, Government Code, as  
4 added by this Act, regardless of whether the deferred adjudication  
5 or procedure is entered before, on, or after the effective date of  
6 this Act.

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