

By: West

S.B. No. 1477

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the expunction of criminal records and to the duty of
3 law enforcement agencies regarding records associated with certain
4 defendants receiving deferred adjudication.

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

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

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

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

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

16 (B) convicted and subsequently pardoned; or

17 (2) each of the following conditions exist:

18 (A) an indictment or information charging the
19 person with commission of a felony has not been presented against
20 the person for an offense arising out of the transaction for which
21 the person was arrested or, if an indictment or information
22 charging the person with commission of a felony was presented, the
23 indictment or information has been dismissed or quashed, and:

24 (i) the limitations period expired before

1 the date on which a petition for expunction was filed under Article
2 55.02; or

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

9 (B) the person has been released and the charge,
10 if any, has not resulted in a final conviction and is no longer
11 pending and there was no court ordered community supervision under
12 Article 42.12 for any offense other than a Class C misdemeanor; and

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

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

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

22 (1) the petitioner was arrested;

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

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

27 SECTION 3. Article 55.03, Code of Criminal Procedure, is

1 amended to read as follows:

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

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

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

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

14 SECTION 4. Section 411.081, Government Code, is amended by
15 adding Subsections (d), (e), and (f) to read as follows:

16 (d) Notwithstanding any other provision of this subchapter,
17 if a person is placed on deferred adjudication community
18 supervision under Section 5, Article 42.12, Code of Criminal
19 Procedure, subsequently receives a discharge and dismissal under
20 Section 5(c), Article 42.12, and satisfies the requirements of
21 Subsection (e), a criminal justice agency may not disclose to the
22 public criminal history record information related to the offense
23 giving rise to the deferred adjudication on or after:

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

27 (2) the fifth anniversary of the discharge and

1 dismissal, if the offense for which the person was placed on
2 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,
3 25, 42, or 46, Penal Code; or

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

7 (e) A person is entitled to the benefit provided under
8 Subsection (d) only if during the applicable period described by
9 Subsection (d)(1), (2), or (3), as appropriate, the person is not
10 convicted of or placed on deferred adjudication community
11 supervision under Section 5, Article 42.12, Code of Criminal
12 Procedure, for any offense other than an offense under the
13 Transportation Code punishable by fine only. A person is not
14 entitled to the benefit provided under Subsection (d) during any
15 period in which the person is required to register as a sex offender
16 under Chapter 62, Code of Criminal Procedure.

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

20 (1) the person entered a plea of guilty or nolo
21 contendere;

22 (2) the person was placed under the supervision of the
23 court or an officer under the supervision of the court; and

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

26 SECTION 5. Subchapter C, Chapter 552, Government Code, is
27 amended by adding Section 552.142 to read as follows:

1 Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED
2 ADJUDICATIONS. (a) Subject to the dates provided by Subsection (b)
3 and the requirements of Subsection (c), information is excepted
4 from the requirements of Section 552.021 if the information relates
5 to an arrest and the prosecution of an offense for which a person is
6 placed on deferred adjudication community supervision under
7 Section 5, Article 42.12, Code of Criminal Procedure, and
8 subsequently receives a discharge and dismissal under Section 5(c),
9 Article 42.12.

10 (b) The exception provided by Subsection (a) for
11 information related to an arrest and the prosecution of an offense
12 for which a person is placed on deferred adjudication is available
13 only on or after:

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

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

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

24 (c) A person is entitled to the benefit provided under
25 Subsection (a) only if during the applicable period described by
26 Subsection (b)(1), (2), or (3), as appropriate, the person is not
27 convicted of or placed on deferred adjudication community

1 supervision under Section 5, Article 42.12, Code of Criminal
2 Procedure, for any offense other than an offense under the
3 Transportation Code punishable by fine only. A person is not
4 entitled to the benefit provided under Subsection (a) during any
5 period in which the person is required to register as a sex offender
6 under Chapter 62, Code of Criminal Procedure.

7 (d) For purposes of Subsections (a) and (b), a person is
8 considered to have been placed on deferred adjudication community
9 supervision if, regardless of the statutory authorization:

10 (1) the person entered a plea of guilty or nolo
11 contendere;

12 (2) the person was placed under the supervision of the
13 court or an officer under the supervision of the court; and

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

16 (e) A person who is the subject of information that is
17 excepted from the requirements of Section 552.021 under this
18 section may deny the occurrence of the arrest and prosecution to
19 which the information relates and the exception of the information
20 under this section, unless the information is being used against
21 the person in a subsequent criminal proceeding.

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

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

27 (c) The changes in law made by this Act to Section 411.081,

1 Government Code, as amended by this Act, and Section 552.142,
2 Government Code, as added by this Act, apply to information related
3 to a deferred adjudication or similar procedure described by
4 Section 411.081(f), Government Code, as added by this Act,
5 regardless of whether the deferred adjudication or procedure is
6 entered before, on, or after the effective date of this Act.