

1-1 By: West S.B. No. 1477
1-2 (In the Senate - Filed March 13, 2003; March 20, 2003, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 May 12, 2003, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; May 12, 2003,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1477 By: Ellis

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to restrictions on the disclosure of certain criminal
1-11 records and to the duty of law enforcement agencies regarding
1-12 records associated with certain defendants receiving deferred
1-13 adjudication; providing a civil penalty.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subsection (a), Article 55.01, Code of Criminal
1-16 Procedure, is amended to read as follows:

1-17 (a) A person who has been placed under a custodial or
1-18 noncustodial arrest [~~arrested~~] for commission of either a felony or
1-19 misdemeanor is entitled to have all records and files relating to
1-20 the arrest expunged if:

1-21 (1) the person is tried for the offense for which the
1-22 person was arrested and is:

1-23 (A) acquitted by the trial court, except as
1-24 provided by Subsection (c) of this section; or

1-25 (B) convicted and subsequently pardoned; or

1-26 (2) each of the following conditions exist:

1-27 (A) an indictment or information charging the
1-28 person with commission of a felony has not been presented against
1-29 the person for an offense arising out of the transaction for which
1-30 the person was arrested or, if an indictment or information
1-31 charging the person with commission of a felony was presented, the
1-32 indictment or information has been dismissed or quashed, and:

1-33 (i) the limitations period expired before
1-34 the date on which a petition for expunction was filed under Article
1-35 55.02; or

1-36 (ii) the court finds that the indictment or
1-37 information was dismissed or quashed because the presentment had
1-38 been made because of mistake, false information, or other similar
1-39 reason indicating absence of probable cause at the time of the
1-40 dismissal to believe the person committed the offense or because it
1-41 was void;

1-42 (B) the person has been released and the charge,
1-43 if any, has not resulted in a final conviction and is no longer
1-44 pending and there was no court ordered community supervision under
1-45 Article 42.12 for any offense other than a Class C misdemeanor; and

1-46 (C) the person has not been convicted of a felony
1-47 in the five years preceding the date of the arrest.

1-48 SECTION 2. Subsection (a), Section 2, Article 55.02, Code
1-49 of Criminal Procedure, is amended to read as follows:

1-50 (a) A person who is entitled to expunction of records and
1-51 files under Article 55.01(a) or (d) [~~55.01(a)(1)(B), 55.01(a)(2),~~
1-52 ~~or 55.01(d)~~] or a person who is eligible for expunction of records
1-53 and files under Article 55.01(b) may file an ex parte petition for
1-54 expunction in a district court for the county in which:

1-55 (1) the petitioner was arrested;

1-56 (2) the person who falsely identified himself or
1-57 herself as the petitioner was arrested, if the petitioner relies on
1-58 an entitlement under Article 55.01(d); or

1-59 (3) the offense was alleged to have occurred.

1-60 SECTION 3. Article 55.03, Code of Criminal Procedure, is
1-61 amended to read as follows:

1-62 Art. 55.03. EFFECT OF EXPUNCTION. When the order of
1-63 expunction is final:

2-1 (1) the release, dissemination, or use of the expunged
2-2 records and files for any purpose other than a purpose described by
2-3 Section 411.083(a) or (b)(1) or (3), Government Code, is
2-4 prohibited;

2-5 (2) except as provided in Subdivision 3 of this
2-6 article, the person arrested may deny the occurrence of the arrest
2-7 and the existence of the expunction order; and

2-8 (3) the person arrested or any other person, when
2-9 questioned under oath in a criminal proceeding about an arrest for
2-10 which the records have been expunged, may state only that the matter
2-11 in question has been expunged.

2-12 SECTION 4. Section 411.081, Government Code, is amended by
2-13 adding Subsections (d) through (g) to read as follows:

2-14 (d) Notwithstanding any other provision of this subchapter,
2-15 if a person is placed on deferred adjudication community
2-16 supervision under Section 5, Article 42.12, Code of Criminal
2-17 Procedure, subsequently receives a discharge and dismissal under
2-18 Section 5(c), Article 42.12, and satisfies the requirements of
2-19 Subsection (e), the person may petition the court that placed the
2-20 defendant on deferred adjudication for an order of nondisclosure
2-21 under this subsection. After notice to the state and a hearing on
2-22 whether the person is entitled to file the petition and issuance of
2-23 the order is in the best interest of justice, the court shall issue
2-24 an order prohibiting criminal justice agencies from disclosing to
2-25 the public criminal history record information related to the
2-26 offense giving rise to the deferred adjudication. A person may
2-27 petition the court for an order of nondisclosure on or after:

2-28 (1) the discharge and dismissal, if the offense for
2-29 which the person was placed on deferred adjudication was a
2-30 misdemeanor other than a misdemeanor described by Subdivision (2);

2-31 (2) the fifth anniversary of the discharge and
2-32 dismissal, if the offense for which the person was placed on
2-33 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,
2-34 25, 42, or 46, Penal Code; or

2-35 (3) the 10th anniversary of the discharge and
2-36 dismissal, if the offense for which the person was placed on
2-37 deferred adjudication was a felony.

2-38 (e) A person is entitled to petition the court under
2-39 Subsection (d) only if during the applicable period described by
2-40 Subsection (d)(1), (2), or (3), as appropriate, the person is not
2-41 convicted of or placed on deferred adjudication community
2-42 supervision under Section 5, Article 42.12, Code of Criminal
2-43 Procedure, for any offense other than an offense under the
2-44 Transportation Code punishable by fine only. A person is not
2-45 entitled to petition the court under Subsection (d) if the person
2-46 has been previously convicted or placed on deferred adjudication
2-47 for:

2-48 (1) an offense requiring registration as a sex
2-49 offender under Chapter 62, Code of Criminal Procedure;

2-50 (2) an offense under Section 20.04, Penal Code,
2-51 regardless of whether the offense is a reportable conviction or
2-52 adjudication for purposes of Chapter 62, Code of Criminal
2-53 Procedure;

2-54 (3) an offense under Section 19.02, 19.03, 22.04,
2-55 22.041, 25.07, or 42.072, Penal Code; or

2-56 (4) any other offense involving family violence, as
2-57 defined by Section 71.004, Family Code.

2-58 (f) For purposes of Subsection (d), a person is considered
2-59 to have been placed on deferred adjudication community supervision
2-60 if, regardless of the statutory authorization:

2-61 (1) the person entered a plea of guilty or nolo
2-62 contendere;

2-63 (2) the judge deferred further proceedings without
2-64 entering an adjudication of guilt and placed the person under the
2-65 supervision of the court or an officer under the supervision of the
2-66 court; and

2-67 (3) at the end of the period of supervision the judge
2-68 dismissed the proceedings and discharged the person.

2-69 (g) When an order of nondisclosure is issued under this

3-1 subsection, the clerk of the court shall send a copy of the order by
3-2 certified mail, return receipt requested, to the Crime Records
3-3 Service of the Department of Public Safety. The Department of
3-4 Public Safety shall send a copy of the order to all law enforcement
3-5 agencies, jails or other detention facilities, magistrates,
3-6 courts, prosecuting attorneys, correctional facilities, central
3-7 state depositories of criminal records, and other officials or
3-8 agencies or other entities of this state or of any political
3-9 subdivision of this state, and to all central federal depositories
3-10 of criminal records that there is reason to believe have criminal
3-11 history record information that is the subject of the order.

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

3-14 Sec. 552.142. EXCEPTION: RECORDS OF CERTAIN DEFERRED
3-15 ADJUDICATIONS. (a) Information is excepted from the requirements
3-16 of Section 552.021 if an order of nondisclosure with respect to the
3-17 information has been issued under Section 411.081(d).

3-18 (b) A person who is the subject of information that is
3-19 excepted from the requirements of Section 552.021 under this
3-20 section may deny the occurrence of the arrest and prosecution to
3-21 which the information relates and the exception of the information
3-22 under this section, unless the information is being used against
3-23 the person in a subsequent criminal proceeding.

3-24 Sec. 552.1425. CIVIL PENALTY: RECORDS OF CERTAIN DEFERRED
3-25 ADJUDICATIONS. (a) A private entity that compiles and
3-26 disseminates for compensation criminal history record information
3-27 may not compile or disseminate information with respect to which an
3-28 order of nondisclosure has been issued under Section 411.081(d).

3-29 (b) A district court may issue a warning to a private entity
3-30 for a first violation of Subsection (a). After receiving a warning
3-31 for the first violation, the private entity is liable to the state
3-32 for a civil penalty not to exceed \$500 for each subsequent
3-33 violation.

3-34 (c) The attorney general or an appropriate prosecuting
3-35 attorney may sue to collect a civil penalty under this section.

3-36 (d) A civil penalty collected under this section shall be
3-37 deposited in the state treasury to the credit of the general revenue
3-38 fund.

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

3-40 (b) The changes in law made by this Act to Chapter 55, Code
3-41 of Criminal Procedure, apply to a person seeking expunction of
3-42 records and files relating to an arrest regardless of whether the
3-43 arrest occurred before, on, or after the effective date of this Act.

3-44 (c) The changes in law made by this Act to Section 411.081,
3-45 Government Code, as amended by this Act, and Sections 552.142 and
3-46 552.1425, Government Code, as added by this Act, apply to
3-47 information related to a deferred adjudication or similar procedure
3-48 described by Subsection (f), Section 411.081, Government Code, as
3-49 added by this Act, regardless of whether the deferred adjudication
3-50 or procedure is entered before, on, or after the effective date of
3-51 this Act.

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