

By: Dutton

H.B. No. 435

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 placed under a custodial or noncustodial arrest 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) [~~if~~] if an indictment, complaint, or information charging the person with commission of an offense [~~a felony~~] was presented, the indictment, complaint, or information

1 has been dismissed or quashed [~~, and:~~

2 [~~(i) the limitations period expired before~~
3 ~~the date on which a petition for expunction was filed under Article~~
4 ~~55.02; or~~

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

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

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

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

19 Sec. 1. (a) The [~~At the request of the defendant and after~~
20 ~~notice to the state, the]~~ trial court [~~presiding over the case in~~
21 ~~which the defendant was acquitted, if the trial court is a district~~
22 ~~court, or a district court in the county in which the trial court is~~
23 ~~located]~~ shall enter an order of expunction for a person entitled to
24 expunction because:

25 (1) the person was acquitted;

26 (2) the person was pardoned; or

27 (3) the offense was dismissed [~~under Article~~

1 ~~55.01(a)(1)(A) not later than the 30th day after the date of the~~
2 ~~acquittal. Upon acquittal, the trial court shall advise the~~
3 ~~defendant of the right to expunction. The defendant shall provide~~
4 ~~to the district court all of the information required in a petition~~
5 ~~for expunction under Section 2(b). The attorney for the defendant~~
6 ~~in the case in which the defendant was acquitted, if the defendant~~
7 ~~was represented by counsel, or the attorney for the state, if the~~
8 ~~defendant was not represented by counsel, shall prepare the order~~
9 ~~for the court's signature].~~

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

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

22 SECTION 3. Sections 3(a), (c), and (d), Article 55.02, Code
23 of Criminal Procedure, are amended to read as follows:

24 (a) In an order of expunction issued under this article, the
25 court shall require any state agency that sent information
26 concerning the arrest to a central federal depository to request
27 the depository to return all records and files subject to the order

1 of expunction. The person who is the subject of an ~~[the]~~ expunction
2 order under Section 2a, or an agency protesting the expunction, may
3 appeal the court's decision in the same manner as in other civil
4 cases.

5 (c) When the order of expunction is final, the clerk of the
6 court shall send a certified copy of the order by certified mail,
7 return receipt requested, to the Crime Records Service of the
8 Department of Public Safety and by hand delivery or certified mail,
9 return receipt requested, to each official or agency or other
10 entity of this state or of any political subdivision of this state
11 named in ~~[designated by the person who is the subject of]~~ the order.
12 The clerk of the court must receive a receipt for each order
13 delivered by hand under this subsection. The Department of Public
14 Safety shall notify any central federal depository of criminal
15 records by any means, including electronic transmission, of the
16 order with an explanation of the effect of the order and a request
17 that the depository, as appropriate, either:

18 (1) destroy or return to the court the records in
19 possession of the depository that are subject to the order,
20 including any information with respect to the order; or

21 (2) comply with Section 5(f) ~~[of this article]~~
22 pertaining to information contained in records and files of a
23 person entitled to expunction under Article 55.01(d).

24 (d) All returned receipts received by the clerk from
25 ~~[notices of the hearing and]~~ copies of the order shall be maintained
26 in the file on the proceedings under this chapter.

27 SECTION 4. Section 4, Article 55.02, Code of Criminal

1 Procedure, is amended to read as follows:

2 Sec. 4. (a) If the state establishes that the person who is
3 the subject of an expunction order is still subject to conviction
4 for an offense arising out of the transaction for which the person
5 was arrested because the statute of limitations has not run and
6 there is reasonable cause to believe that the state may proceed
7 against the person for the offense, the court may provide in its
8 order that the law enforcement agency and the prosecuting attorney
9 responsible for investigating the offense may retain any records
10 and files that are necessary to the investigation.

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

15 (1) the records and files are necessary to conduct a
16 subsequent investigation and prosecution of a person other than the
17 person who is the subject of the expunction order; or

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

20 (A) another criminal case, including a
21 prosecution, motion to adjudicate or revoke community supervision,
22 parole revocation hearing, mandatory supervision revocation
23 hearing, punishment hearing, or bond hearing; or

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

26 (c) [~~(b)~~] Unless the person who is the subject of the
27 expunction order is again arrested for or charged with an offense

1 arising out of the transaction for which the person was arrested or
2 unless the court provides for the retention of records and files
3 under Subsection (b), [~~(a) of this section, the provisions of~~]
4 Articles 55.03 and 55.04 [~~of this code~~] apply to files and records
5 retained under this section.

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

8 (c) Except in the case of a person who is the subject of an
9 expunction order based on an entitlement under Article 55.01(d), if
10 an order of expunction is issued under this article, the court
11 records concerning expunction proceedings are not open for
12 inspection by anyone except the person who is the subject of the
13 order unless the order permits retention of a record under Section
14 4(a) [~~4 of this article~~] and the person is again arrested for or
15 charged with an offense arising out of the transaction for which the
16 person was arrested or unless the court provides for the retention
17 of records and files under Section 4(b) [~~4(a) of this article~~]. The
18 clerk of the court issuing the order shall obliterate all public
19 references to the proceeding and maintain the files or other
20 records in an area not open to inspection.

21 SECTION 6. Section 2, Article 55.02, Code of Criminal
22 Procedure, and Articles 55.05 and 102.006, Code of Criminal
23 Procedure, are repealed.

24 SECTION 7. (a) This Act applies only to the expunction of
25 arrest records related to:

26 (1) a criminal offense for which an acquittal occurred
27 on or after the effective date of this Act;

1 (2) a charge for an offense that was dismissed on or
2 after the effective date of this Act; or

3 (3) an arrest made on or after the effective date of
4 this Act.

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

9 SECTION 8. This Act takes effect September 1, 2005.