

AN ACT

relating to petitions and procedures for the expunction or nondisclosure of criminal records and files and to the consequences of orders of nondisclosure.

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

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

(a-1) Notwithstanding Subsection (a)(2)(C), a person's conviction of a felony in the five years preceding the date of the arrest does not affect the person's entitlement to expunction for purposes of an ex parte petition filed on behalf of the person by the director of the Department of Public Safety under Section 2(e), Article 55.02.

SECTION 2. Section 2, Article 55.02, Code of Criminal Procedure, is amended by amending Subsection (d) and adding Subsections (e) and (f) to read as follows:

(d) If the court finds that the petitioner, or a person for whom an ex parte petition is filed under Subsection (e), is entitled to expunction of any records and files that are the subject of the petition, it shall enter an order directing expunction.

(e) The director of the Department of Public Safety or the director's authorized representative may file on behalf of a person described by Subsection (a) of this section or by Section 2a an ex parte petition for expunction in a district court for the county in

1 which:

2 (1) the person was arrested; or

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

4 (f) An ex parte petition filed under Subsection (e) must be  
5 verified and must include the following or an explanation for why  
6 one or more of the following is not included:

7 (1) the person's:

8 (A) full name;

9 (B) sex;

10 (C) race;

11 (D) date of birth;

12 (E) driver's license number;

13 (F) social security number; and

14 (G) address at the time of the arrest;

15 (2) the offense charged against the person;

16 (3) the date the offense charged against the person  
17 was alleged to have been committed;

18 (4) the date the person was arrested;

19 (5) the name of the county where the person was  
20 arrested and if the arrest occurred in a municipality, the name of  
21 the municipality;

22 (6) the name of the agency that arrested the person;

23 (7) the case number and court of offense; and

24 (8) a list of all law enforcement agencies, jails or  
25 other detention facilities, magistrates, courts, prosecuting  
26 attorneys, correctional facilities, central state depositories of  
27 criminal records, and other officials or agencies or other entities

1 of this state or of any political subdivision of this state and of  
2 all central federal depositories of criminal records that the  
3 person has reason to believe have records or files that are subject  
4 to expunction.

5 SECTION 3. Section 411.081, Government Code, is amended by  
6 amending Subsections (d), (g), and (h) and by adding Subsections  
7 (g-1), (g-2), (i), and (j) to read as follows:

8 (d) Notwithstanding any other provision of this subchapter,  
9 if a person is placed on deferred adjudication community  
10 supervision under Section 5, Article 42.12, Code of Criminal  
11 Procedure, subsequently receives a discharge and dismissal under  
12 Section 5(c), Article 42.12, and satisfies the requirements of  
13 Subsection (e), the person may petition the court that placed the  
14 defendant on deferred adjudication for an order of nondisclosure  
15 under this subsection. Except as provided by Subsection (e), a  
16 person may petition the court under this subsection regardless of  
17 whether the person has been previously placed on deferred  
18 adjudication community supervision for another offense. After  
19 notice to the state and a hearing on whether the person is entitled  
20 to file the petition and issuance of the order is in the best  
21 interest of justice, the court shall issue an order prohibiting  
22 criminal justice agencies from disclosing to the public criminal  
23 history record information related to the offense giving rise to  
24 the deferred adjudication. A criminal justice agency may disclose  
25 criminal history record information that is the subject of the  
26 order only to other criminal justice agencies, for criminal justice  
27 or regulatory licensing purposes, an agency or entity listed in

1 Subsection (i), or the person who is the subject of the order [~~an~~  
2 ~~individual or agency described by Section 411.083(b)(1), (2), or~~  
3 ~~(3)~~]. A person may petition the court that placed the person on  
4 deferred adjudication for an order of nondisclosure on payment of a  
5 \$28 fee to the clerk of the court in addition to any other fee that  
6 generally applies to the filing of a civil petition. The payment  
7 may be made only on or after:

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

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

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

18 (g) When an order of nondisclosure is issued under this  
19 section [~~subsection~~], the clerk of the court shall send a copy of  
20 the order by certified mail, return receipt requested, to the Crime  
21 Records Service of the Department of Public Safety. Not later than  
22 10 business days after receipt of the order, the [~~The~~] Department of  
23 Public Safety shall seal any criminal history record information  
24 maintained by the department that is the subject of the order. The  
25 department shall also send a copy of the order by mail or electronic  
26 means to all:

27 (1) law enforcement agencies, jails or other detention

1 facilities, magistrates, courts, prosecuting attorneys,  
2 correctional facilities, central state depositories of criminal  
3 records, and other officials or agencies or other entities of this  
4 state or of any political subdivision of this state;

5 (2) [~~, and to all~~] central federal depositories of  
6 criminal records that there is reason to believe have criminal  
7 history record information that is the subject of the order; and

8 (3) private entities that purchase criminal history  
9 record information from the department.

10 (g-1) Not later than 30 business days after receipt of an  
11 order from the Department of Public Safety under Subsection (g), an  
12 individual or entity described by Subsection (g)(1) shall seal any  
13 criminal history record information maintained by the individual or  
14 entity that is the subject of the order.

15 (g-2) A person whose criminal history record information  
16 has been sealed under this section is not required in any  
17 application for employment, information, or licensing to state that  
18 the person has been the subject of any criminal proceeding related  
19 to the information that is the subject of an order issued under this  
20 section.

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

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

4 (2) the actions taken by the department with respect  
5 to the petitions and orders received; ~~and~~

6 (3) the costs incurred by the department in taking  
7 those actions; and

8 (4) the number of persons who are the subject of an  
9 order of nondisclosure and who became the subject of criminal  
10 charges for an offense committed after the order was issued.

11 (i) A criminal justice agency may disclose criminal history  
12 record information that is the subject of an order of nondisclosure  
13 to the following noncriminal justice agencies or entities only:

14 (1) the State Board for Educator Certification;

15 (2) a school district, charter school, private school,  
16 regional education service center, commercial transportation  
17 company, or education shared service arrangement;

18 (3) the Texas State Board of Medical Examiners;

19 (4) the Texas School for the Blind and Visually  
20 Impaired;

21 (5) the Board of Law Examiners;

22 (6) the State Bar of Texas;

23 (7) a district court regarding a petition for name  
24 change under Subchapter B, Chapter 45, Family Code;

25 (8) the Texas School for the Deaf;

26 (9) the Department of Family and Protective Services;

27 (10) the Texas Youth Commission;

1           (11) the Department of Assistive and Rehabilitative  
2 Services;

3           (12) the Department of State Health Services, a local  
4 mental health service, a local mental retardation authority, or a  
5 community center providing services to persons with mental illness  
6 or retardation;

7           (13) the Texas Private Security Board;

8           (14) a municipal or volunteer fire department;

9           (15) the Board of Nurse Examiners;

10          (16) a safe house providing shelter to children in  
11 harmful situations;

12          (17) a public or nonprofit hospital or hospital  
13 district;

14          (18) the Texas Juvenile Probation Commission;

15          (19) the securities commissioner, the banking  
16 commissioner, the savings and loan commissioner, or the credit  
17 union commissioner;

18          (20) the Texas State Board of Public Accountancy;

19          (21) the Texas Department of Licensing and Regulation;

20          (22) the Health and Human Services Commission; and

21          (23) the Department of Aging and Disability Services.

22          (j) If the Department of Public Safety receives information  
23 indicating that a private entity that purchases criminal history  
24 record information from the department has been found by a court to  
25 have committed five or more violations of Section 552.1425 by  
26 compiling or disseminating information with respect to which an  
27 order of nondisclosure has been issued, the department may not

1 release any criminal history record information to that entity  
2 until the first anniversary of the date of the most recent  
3 violation.

4 SECTION 4. Article 35.12, Code of Criminal Procedure, is  
5 amended to read as follows:

6 Art. 35.12. MODE OF TESTING. (a) In testing the  
7 qualification of a prospective juror after the juror [~~he~~] has been  
8 sworn, the juror [~~he~~] shall be asked by the court, or under its  
9 direction:

10 1. Except for failure to register, are you a qualified  
11 voter in this county and state under the Constitution and laws of  
12 this state?

13 2. Have you ever been convicted of theft or any felony?

14 3. Are you under indictment or legal accusation for  
15 theft or any felony?

16 (b) In testing the qualifications of a prospective juror,  
17 with respect to whether the juror has been the subject of an order  
18 of nondisclosure or has a criminal history that includes  
19 information subject to that order, the juror may state only that the  
20 matter in question has been sealed.

21 SECTION 5. The changes in law made by this Act relating to a  
22 person's eligibility for an order of nondisclosure apply to  
23 criminal history record information related to a deferred  
24 adjudication or similar procedure described by Subsection (f),  
25 Section 411.081, Government Code, regardless of whether the  
26 deferred adjudication or procedure is entered before, on, or after  
27 the effective date of this Act.



1 SECTION 6. This Act takes effect September 1, 2005.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 3093 was passed by the House on May 10, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 3093 on May 27, 2005, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 3093 was passed by the Senate, with amendments, on May 24, 2005, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor