

By: Dutton

H.B. No. 799

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. Section 2a, Article 55.02, Code of Criminal
23 Procedure, is amended by adding Subsection (e) to read as follows:

24 (e) The director of the Department of Public Safety or the
25 director's authorized representative may file on behalf of a person
26 under this section the application described by Subsection (a).
27 The application must be verified and must include all of the

1 information otherwise required of an application under this
2 section, including the information described by Subsections (c)(1)
3 and (3). The director of the Department of Public Safety or the
4 director's authorized representative shall forward a copy of the
5 application to the district court for the county in which the
6 person resides and shall request the court to enter an order
7 directing expunction based on an entitlement to expunction under
8 Article 55.01(d). On receipt of a request under this subsection,
9 the court shall, without holding a hearing on the matter, enter a
10 final order directing expunction.

11 SECTION 4. Sections 3(a), (c), and (d), Article 55.02, Code
12 of Criminal Procedure, are amended to read as follows:

13 (a) In an order of expunction issued under this article, the
14 court shall require any state agency that sent information
15 concerning the arrest to a central federal depository to request
16 the depository to return all records and files subject to the order
17 of expunction. A [The] person who is the subject of an [the]
18 expunction order under Section 2a, or an agency protesting the
19 expunction, may appeal the court's decision in the same manner as in
20 other civil cases.

21 (c) When the order of expunction is final, the clerk of the
22 court shall send a certified copy of the order to the Crime Records
23 Service of the Department of Public Safety and to each official or
24 agency or other entity of this state or of any political subdivision
25 of this state named in [designated by the person who is the subject
26 of] the order. The certified copy of the order must be sent by
27 secure electronic mail or facsimile transmission~~[, if requested in~~

1 ~~writing by the person who is the subject of the order,~~ or
2 [~~otherwise~~] by certified mail, return receipt requested. In
3 sending the order to an entity named in the order [~~designated by the~~
4 ~~person~~], the clerk may elect to substitute hand delivery for
5 certified mail under this subsection, but the clerk must receive a
6 receipt for that hand-delivered order. The Department of Public
7 Safety shall notify any central federal depository of criminal
8 records by any means, including secure electronic mail or facsimile
9 transmission, of the order with an explanation of the effect of the
10 order and a request that the depository, as appropriate, either:

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

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

17 (d) Any returned receipts received by the clerk from
18 [~~notices of the hearing and~~] copies of the order shall be maintained
19 in the file on the proceedings under this chapter.

20 SECTION 5. Section 4, Article 55.02, Code of Criminal
21 Procedure, is amended to read as follows:

22 Sec. 4. (a) If the state establishes that the person who is
23 the subject of an expunction order is still subject to conviction
24 for an offense arising out of the transaction for which the person
25 was arrested because the statute of limitations has not run and
26 there is reasonable cause to believe that the state may proceed
27 against the person for the offense, the court may provide in its

1 order that the law enforcement agency and the prosecuting attorney
2 responsible for investigating the offense may retain any records
3 and files that are necessary to the investigation.

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

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

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

13 (A) another criminal case, including a
14 prosecution, motion to adjudicate or revoke community supervision,
15 parole revocation hearing, mandatory supervision revocation
16 hearing, punishment hearing, or bond hearing; or

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

19 (c) [~~(b)~~] Unless the person who is the subject of the
20 expunction order is again arrested for or charged with an offense
21 arising out of the transaction for which the person was arrested or
22 unless the court provides for the retention of records and files
23 under Subsection (b), [~~(a) of this section, the provisions of~~]
24 Articles 55.03 and 55.04 [~~of this code~~] apply to files and records
25 retained under this section.

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

1 (c) Except in the case of a person who is the subject of an
2 expunction order based on an entitlement under Article 55.01(d), if
3 an order of expunction is issued under this article, the court
4 records concerning expunction proceedings are not open for
5 inspection by anyone except the person who is the subject of the
6 order unless the order permits retention of a record under Section
7 4(a) [~~4 of this article~~] and the person is again arrested for or
8 charged with an offense arising out of the transaction for which the
9 person was arrested or unless the court provides for the retention
10 of records and files under Section 4(b) [~~4(a) of this article~~]. The
11 clerk of the court issuing the order shall obliterate all public
12 references to the proceeding and maintain the files or other
13 records in an area not open to inspection.

14 SECTION 7. The following provisions of the Code of Criminal
15 Procedure are repealed:

- 16 (1) Subsection (a-1), Article 55.01;
17 (2) Section 2, Article 55.02;
18 (3) Article 55.05; and
19 (4) Article 102.006.

20 SECTION 8. (a) This Act applies only to the expunction of
21 arrest records related to:

- 22 (1) a criminal offense for which an acquittal occurred
23 on or after the effective date of this Act;
24 (2) a charge for an offense that was dismissed on or
25 after the effective date of this Act; or
26 (3) an arrest made on or after the effective date of
27 this Act.

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

5 SECTION 9. This Act takes effect September 1, 2007.