

By: Thompson

H.B. No. 2575

A BILL TO BE ENTITLED

AN ACT

relating to an order of expunction or similar order with respect to certain arrest records and files.

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) the limitations period expired before the date on which a petition for expunction was filed under Article 55.02, and 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; or

(B) ~~[7]~~ if an indictment, complaint, or information charging the person with commission of an offense ~~[a~~

1 ~~felony]~~ was presented, the indictment, complaint, or information  
2 has been dismissed or quashed~~[,]~~ and the charge is no longer  
3 pending~~[+]~~

4 ~~[(i) the limitations period expired before~~  
5 ~~the date on which a petition for expunction was filed under Article~~  
6 ~~55.02; or~~

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

13 (3) the person was placed on deferred adjudication  
14 community supervision for the offense for which the person was  
15 arrested, and the judge, under Section 5, Article 42.12,  
16 subsequently discharged the person and dismissed the proceedings

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

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

23 SECTION 2. Chapter 55, Code of Criminal Procedure, is  
24 amended by adding Articles 55.015 and 55.025 to read as follows:

25 Art. 55.015. WAIVER OF FEES. A person who is entitled to  
26 the expunction of records and files under Article 55.01(a), or to  
27 the expunction of identifying information under Article 55.01(d),

1 is not required to pay a filing fee or other cost of court to file a  
2 petition and obtain an order of expunction under this chapter.

3 Art. 55.025. COURT ORDER DIRECTING DELETION OF REFERENCES  
4 TO CERTAIN FELONY ARRESTS. (a) A person who is arrested and charged  
5 with the commission of a felony and who, with respect to the  
6 transaction for which the person was arrested, is convicted of a  
7 misdemeanor only may file an ex parte petition with the convicting  
8 court under this article for an order to delete from public records  
9 and files all index references to the nature or grade of the offense  
10 for which the petitioner was arrested. The petition must include  
11 sufficient information for the court to determine whether the  
12 petitioner is eligible for the order.

13 (b) On receipt of a petition under Subsection (a), the court  
14 shall:

15 (1) promptly determine if the petitioner is eligible  
16 for the order; and

17 (2) if eligible, issue an order directing each  
18 official, agency, or other entity described by Section 2(b)(8),  
19 Article 55.02, to delete from its public records and files all index  
20 references to the nature or grade of the offense for which the  
21 petitioner was arrested.

22 SECTION 3. Section 1, Article 55.02, Code of Criminal  
23 Procedure, is amended to read as follows:

24 Sec. 1. At the request of the defendant and after notice to  
25 the state, the trial court presiding over the case in which the  
26 defendant was acquitted, if the trial court is a district court, or  
27 a district court in the county in which the trial court is located

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

12 SECTION 4. Section 5, Article 55.02, Code of Criminal  
13 Procedure, is amended by amending Subsections (b), (c), (d), and  
14 (d-1) to read as follows:

15 (b) Except as provided by Subsection (f) [~~in the case of a~~  
16 ~~person who is the subject of an expunction order on the basis of an~~  
17 ~~acquittal or an expunction order based on an entitlement under~~  
18 ~~Article 55.01(d)~~], the court may give the person who is the subject  
19 of the order all records and files returned to it pursuant to its  
20 order.

21 (c) If [~~Except in the case of a person who is the subject of~~  
22 ~~an expunction order based on an entitlement under Article 55.01(d),~~  
23 ~~if~~] an order of expunction is issued under this article, the court  
24 records concerning expunction proceedings are not open for  
25 inspection by anyone except the person who is the subject of the  
26 order unless the order permits retention of a record under Section 4  
27 [~~of this article~~] and the person is again arrested for or charged

1 with an offense arising out of the transaction for which the person  
2 was arrested or unless the court provides for the retention of  
3 records and files under Subsection (f) or Section 4(a) [~~of this~~  
4 ~~article~~]. If under this subsection court records concerning  
5 expunction proceedings are not open for public inspection, the  
6 ~~[The]~~ clerk of the court issuing the order of expunction shall  
7 obliterate all public references to the expunction proceeding and  
8 maintain the files or other records that are subject to the order of  
9 expunction in an area not open to inspection.

10 (d) ~~The~~ [~~Except in the case of a person who is the subject of~~  
11 ~~an expunction order on the basis of an acquittal or an expunction~~  
12 ~~order based on an entitlement under Article 55.01(d), the]~~ clerk of  
13 the court shall destroy all the files or other records that are  
14 subject to an order of expunction and are maintained under  
15 Subsection (c) in an area not open to inspection not earlier than  
16 the 20th [~~60th~~] day after the date the order [~~of expunction~~]  
17 issued or later than the 60th day after the date the order is issued  
18 [~~first anniversary of that date unless the records or files were~~  
19 ~~released under Subsection (b)~~].

20 (d-1) Not later than the 10th [~~30th~~] day before the date on  
21 which the clerk destroys files or other records under Subsection  
22 (d), the clerk shall provide notice by mail, electronic mail, or  
23 facsimile transmission to the attorney representing the state in  
24 the expunction proceeding. If the attorney representing the state  
25 in the expunction proceeding objects to the destruction not later  
26 than the fifth [~~20th~~] day after receiving notice under this  
27 subsection, the clerk may not destroy the files or other records

1 until the 60th day after [~~first anniversary of~~] the date the order  
2 of expunction is issued or the first business day after that date.

3 SECTION 5. Article 55.03, Code of Criminal Procedure, is  
4 amended to read as follows:

5 Art. 55.03. EFFECT OF EXPUNCTION. When the order of  
6 expunction is final:

7 (1) the release, maintenance, dissemination, or use of  
8 the expunged records and files for any purpose is prohibited;

9 (2) except as provided in Subdivision (3) [~~of this~~  
10 ~~article~~], the person arrested may deny the occurrence of the arrest  
11 and the existence of the [~~expunction~~] order of expunction,  
12 including in response to any direct written or oral inquiry as to  
13 whether the person is the subject of an order of expunction; and

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

18 SECTION 6. Article 55.04, Code of Criminal Procedure, is  
19 amended to read as follows:

20 Art. 55.04. VIOLATION OF EXPUNCTION ORDER; CIVIL REMEDIES.

21 (a) In this article, "person" has the meaning assigned by Section  
22 1.07, Penal Code.

23 (b) [~~Sec. 1.~~] A person violates an order of expunction if the  
24 person:

25 (1) knowingly releases, disseminates, or otherwise  
26 uses records or files subject to an order of expunction after the  
27 person [~~who~~] acquires knowledge of:

1           (A) an arrest, by virtue of the person's status  
2 as [while] an officer or employee of the state, [or of] any agency  
3 or other entity of the state, or any political subdivision of the  
4 state; and

5           (B) [who knows of] an order expunging the records  
6 and files relating to that arrest;

7           (2) fails to timely destroy records and files, or to  
8 obliterate identifying portions of the records and files, as  
9 required by law; or

10           (3) in the person's official capacity as a licensing  
11 authority or employer, requests a person to divulge whether the  
12 person is the subject of an order of expunction [commits an offense  
13 if he knowingly releases, disseminates, or otherwise uses the  
14 records or files].

15           (c) A person who is the subject of an order of expunction may  
16 file suit in a civil court for:

17           (1) injunctive relief to prevent or restrain the  
18 violation of an order of expunction;

19           (2) actual damages sustained as a result of the  
20 violation of an order of expunction; and

21           (3) punitive damages, for any violation of the order  
22 that is committed intentionally.

23           (d) A person who successfully maintains an action under  
24 Subsection (c) is entitled to recover reasonable attorney's fees  
25 and court costs.

26           (e) If the Department of Public Safety receives information  
27 indicating that suit has been filed against a person for a violation

1 of this section, the department may not release any additional  
2 criminal history record information to that person until the suit  
3 is resolved [~~Sec. 2. A person who knowingly fails to return or to~~  
4 ~~obliterate identifying portions of a record or file ordered~~  
5 ~~expunged under this chapter commits an offense.~~

6 [~~Sec. 3. An offense under this article is a Class B~~  
7 ~~misdemeanor~~].

8 SECTION 7. Article 55.01(a-1), Code of Criminal Procedure,  
9 is repealed.

10 SECTION 8. The changes in law made by this Act in amending  
11 Articles 55.01 and 55.02, Code of Criminal Procedure, and in adding  
12 Articles 55.015 and 55.025 of that code, apply to a person seeking  
13 an order of expunction of arrest records and files or similar order  
14 relating to an arrest regardless of whether the arrest occurred  
15 before, on, or after the effective date of this Act.

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