

AN ACT

relating to the expunction of records and files relating to a person's arrest.

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

SECTION 1. Articles 55.01(a) and (b), Code of Criminal Procedure, are 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:

(i) pardoned; or

(ii) otherwise granted relief on the basis of actual innocence with respect to that offense; or

(2) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending, provided that there was no court-ordered community supervision under Article 42.12 for the offense and that [~~each of the following conditions exist~~]:

(A) an indictment or information charging the

1 person with the commission of a felony or misdemeanor:

2 (i) was [~~has~~] not [~~been~~] presented against
3 the person for the [~~an~~] offense at any time before the date of the
4 petition for expunction, and more than 180 days have elapsed from
5 the date of the person's arrest for the offense; [~~arising out of the~~
6 ~~transaction for which the person was arrested~~] or

7 (ii) regardless of whether any statute of
8 limitations exists for the offense and whether any limitations
9 period for the offense has expired, was [~~, if an indictment or~~
10 ~~information charging the person with commission of a felony was~~
11 ~~presented, the indictment or information has been~~] dismissed or
12 quashed and, if the offense was a felony, more than 180 days have
13 elapsed from the date the indictment or information was dismissed
14 or quashed [~~7~~] and [~~+~~

15 [~~(i) the limitations period expired before~~
16 ~~the date on which a petition for expunction was filed under Article~~
17 ~~55.02, or~~

18 [~~(ii)~~] the court finds that the indictment or
19 information was dismissed or quashed because the presentment had
20 been made because of mistake, false information, or other similar
21 reason indicating absence of probable cause at the time of the
22 dismissal to believe the person committed the offense or because it
23 was void; or

24 (B) prosecution of the person for the offense for
25 which the person was arrested is no longer possible because the
26 limitations period has expired [~~the person has been released and~~
27 ~~the charge, if any, has not resulted in a final conviction and is no~~

1 ~~longer pending and there was no court ordered community supervision~~
2 ~~under Article 42.12 for any offense other than a Class C~~
3 ~~misdemeanor, and~~

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

6 (b) Except as provided by Subsection (c) ~~[of this section]~~,
7 a district court may expunge all records and files relating to the
8 arrest of a person who has been arrested for commission of a felony
9 or misdemeanor under the procedure established under Article 55.02
10 ~~[of this code]~~ if:

11 (1) the person is:

12 (A) ~~[(1)]~~ tried for the offense for which the
13 person was arrested;

14 (B) ~~[(2)]~~ convicted of the offense; and

15 (C) ~~[(3)]~~ acquitted by the court of criminal
16 appeals or, if the period for granting a petition for discretionary
17 review has expired, by a court of appeals; or

18 (2) an office of the attorney representing the state
19 authorized by law to prosecute the offense for which the person was
20 arrested recommends the expunction to the appropriate district
21 court before the person is tried for the offense, regardless of
22 whether an indictment or information has been presented against the
23 person in relation to the offense.

24 SECTION 2. Article 55.02, Code of Criminal Procedure, is
25 amended by adding Section 1a to read as follows:

26 Sec. 1a. (a) The trial court presiding over a case in which
27 a defendant is convicted and subsequently pardoned or otherwise

1 subsequently granted relief on the basis of actual innocence of the
2 offense of which the defendant was convicted, if the trial court is
3 a district court, or a district court in the county in which the
4 trial court is located, shall enter an order of expunction for a
5 person entitled to expunction under Article 55.01(a)(1)(B) not
6 later than the 30th day after the date the court receives notice of
7 the pardon or other grant of relief. The person shall provide to
8 the district court all of the information required in a petition
9 for expunction under Section 2(b).

10 (b) The attorney for the state shall prepare an expunction
11 order under this section for the court's signature.

12 (c) The court shall include in an expunction order under
13 this section a listing of each official, agency, or other entity of
14 this state or political subdivision of this state and each private
15 entity that there is reason to believe has any record or file that
16 is subject to the order. The court shall also provide in an
17 expunction order under this section that the Department of Public
18 Safety and the Texas Department of Criminal Justice shall:

19 (1) return all records and files that are subject to
20 the expunction order to the court; and

21 (2) delete from its public records all index
22 references to the records and files that are subject to the
23 expunction order.

24 (d) The court shall retain all records and files provided to
25 the court under Subsection (c) until the statute of limitations has
26 run for any civil case or proceeding relating to the wrongful
27 imprisonment of the person subject to the expunction order.

1 SECTION 3. Section 2(a), Article 55.02, Code of Criminal
2 Procedure, is amended to read as follows:

3 (a) A person who is entitled to expunction of records and
4 files under Article 55.01(a)(2) [~~55.01(a)~~] or a person who is
5 eligible for expunction of records and files under Article 55.01(b)
6 may file an ex parte petition for expunction in a district court for
7 the county in which:

8 (1) the petitioner was arrested; or

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

10 SECTION 4. Section 3(c), Article 55.02, Code of Criminal
11 Procedure, is amended to read as follows:

12 (c) When the order of expunction is final, the clerk of the
13 court shall send a certified copy of the order to the Crime Records
14 Service of the Department of Public Safety and to each official or
15 agency or other governmental entity of this state or of any
16 political subdivision of this state named in [~~designated by the~~
17 ~~person who is the subject of~~] the order. The certified copy of the
18 order must be sent by secure electronic mail, electronic
19 transmission, or facsimile transmission or otherwise by certified
20 mail, return receipt requested. In sending the order to a
21 governmental entity named in the order [~~designated by the person~~],
22 the clerk may elect to substitute hand delivery for certified mail
23 under this subsection, but the clerk must receive a receipt for that
24 hand-delivered order.

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

27 (a) Except as provided by Subsections (f) and (g), on

1 receipt of the order, each official or agency or other governmental
2 entity named in the order shall:

3 (1) return all records and files that are subject to
4 the expunction order to the court or in cases other than those
5 described by Section 1a, if removal is impracticable, obliterate
6 all portions of the record or file that identify the person who is
7 the subject of the order and notify the court of its action; and

8 (2) delete from its public records all index
9 references to the records and files that are subject to the
10 expunction order.

11 SECTION 6. Article 55.01(a-1), Code of Criminal Procedure,
12 is repealed.

13 SECTION 7. This Act applies to an expunction of arrest
14 records and files for any criminal offense:

15 (1) that occurred before, on, or after the effective
16 date of this Act; or

17 (2) for which a pardon or other relief on the basis of
18 actual innocence was granted before, on, or after the effective
19 date of this Act.

20 SECTION 8. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 3481 was passed by the House on May 6, 2009, by the following vote: Yeas 143, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 3481 on May 29, 2009, by the following vote: Yeas 137, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3481 was passed by the Senate, with amendments, on May 28, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor