

1-1 By: Veasey, Hodge (Senate Sponsor - Harris) H.B. No. 3481
1-2 (In the Senate - Received from the House May 7, 2009;
1-3 May 7, 2009, read first time and referred to Committee on Criminal
1-4 Justice; May 21, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 21, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3481 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the right to an expunction of records and files relating
1-11 to a person's arrest.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Articles 55.01(a) and (b), Code of Criminal
1-14 Procedure, are amended to read as follows:

1-15 (a) A person who has been placed under a custodial or
1-16 noncustodial arrest for commission of either a felony or
1-17 misdemeanor is entitled to have all records and files relating to
1-18 the arrest expunged if:

1-19 (1) the person is tried for the offense for which the
1-20 person was arrested and is:

1-21 (A) acquitted by the trial court, except as
1-22 provided by Subsection (c) [~~of this section~~]; or

1-23 (B) convicted and subsequently pardoned; or

1-24 (2) the person has been released and the charge, if
1-25 any, has not resulted in a final conviction and is no longer
1-26 pending, provided that there was no court-ordered community
1-27 supervision under Article 42.12 for the offense and that [~~each of~~
1-28 ~~the following conditions exist~~]:

1-29 (A) an indictment or information charging the
1-30 person with the commission of a felony or misdemeanor:

1-31 (i) was [~~has~~] not [~~been~~] presented against
1-32 the person for the [~~an~~] offense at any time before the date of the
1-33 petition for expunction, and more than 180 days have elapsed from
1-34 the date of the person's arrest for the offense; [~~arising out of the~~
1-35 ~~transaction for which the person was arrested]~~ or

1-36 (ii) regardless of whether there is no
1-37 statute of limitations for the offense, was [~~, if an indictment or~~
1-38 ~~information charging the person with commission of a felony was~~
1-39 ~~presented, the indictment or information has been]~~ dismissed or
1-40 quashed and, if the offense was a felony, more than 180 days have
1-41 elapsed from the date the indictment or information was dismissed
1-42 or quashed [~~7~~] and [~~+~~]

1-43 [~~(i) the limitations period expired before~~
1-44 ~~the date on which a petition for expunction was filed under Article~~
1-45 ~~55.02, or~~

1-46 [~~(ii)]~~ the court finds that the indictment
1-47 or information was dismissed or quashed because the presentment had
1-48 been made because of mistake, false information, or other similar
1-49 reason indicating absence of probable cause at the time of the
1-50 dismissal to believe the person committed the offense or because it
1-51 was void; or

1-52 (B) prosecution of the person for the offense for
1-53 which the person was arrested is no longer possible because the
1-54 limitations period has expired [~~the person has been released and~~
1-55 ~~the charge, if any, has not resulted in a final conviction and is no~~
1-56 ~~longer pending and there was no court ordered community supervision~~
1-57 ~~under Article 42.12 for any offense other than a Class C~~
1-58 ~~misdemeanor, and~~

1-59 [~~(C) the person has not been convicted of a~~
1-60 ~~felony in the five years preceding the date of the arrest].~~

1-61 (b) Except as provided by Subsection (c) [~~of this section~~],
1-62 a district court may expunge all records and files relating to the
1-63 arrest of a person who has been arrested for commission of a felony

2-1 or misdemeanor under the procedure established under Article 55.02
2-2 [~~of this code~~] if:

- 2-3 (1) the person is:
- 2-4 (A) [~~(1)~~] tried for the offense for which the
- 2-5 person was arrested;
- 2-6 (B) [~~(2)~~] convicted of the offense; and
- 2-7 (C) [~~(3)~~] acquitted by the court of criminal
- 2-8 appeals or, if the period for granting a petition for discretionary
- 2-9 review has expired, by a court of appeals; or

2-10 (2) an office of the attorney representing the state
2-11 authorized by law to prosecute the offense for which the person was
2-12 arrested recommends the expunction to the appropriate district
2-13 court before the person is tried for the offense, regardless of
2-14 whether an indictment or information has been presented against the
2-15 person in relation to the offense.

2-16 SECTION 2. Article 55.01(a-1), Code of Criminal Procedure,
2-17 is repealed.

2-18 SECTION 3. The change in law made by this Act applies to a
2-19 person seeking expunction of records relating to an arrest
2-20 regardless of whether the arrest occurred before, on, or after the
2-21 effective date of this Act.

2-22 SECTION 4. This Act takes effect immediately if it receives
2-23 a vote of two-thirds of all the members elected to each house, as
2-24 provided by Section 39, Article III, Texas Constitution. If this
2-25 Act does not receive the vote necessary for immediate effect, this
2-26 Act takes effect September 1, 2009.

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