

By: Alonzo

H.B. No. 3881

A BILL TO BE ENTITLED

AN ACT

relating to the right to an 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), (a-1), 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 pardoned; or

(2) each of the following conditions exist:

(A) an indictment or information charging the person with commission of a felony has not been presented against the person for an offense arising out of the transaction for which the person was arrested or, if an indictment or information charging the person with commission of a felony was presented, the indictment or information has been dismissed or quashed;

(B) if an indictment or information charging the person with commission of a felony was dismissed or quashed as

1 described by Paragraph (A), either [~~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 or  
6 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 (C) [~~(B)~~] the person has been released and the  
12 charge, if any, has not resulted in a final conviction and is no  
13 longer pending and there was no court ordered community supervision  
14 under Article 42.12 for any offense other than a Class C  
15 misdemeanor; and

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

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

24 (b) Except as provided by Subsection (c) [~~of this section~~], a  
25 district court may expunge all records and files relating to the  
26 arrest of a person who has been arrested for commission of a felony  
27 or misdemeanor under the procedure established under Article 55.02

1 ~~[of this code]~~ if:

2           (1) the person is:

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

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

6                   (C) [~~(3)~~] acquitted by the court of criminal  
7 appeals; or

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

14           SECTION 2. The change in law made by this Act applies to a  
15 person seeking expunction of records relating to an arrest  
16 regardless of whether the arrest occurred before, on, or after the  
17 effective date of this Act.

18           SECTION 3. This Act takes effect immediately if it receives  
19 a vote of two-thirds of all the members elected to each house, as  
20 provided by Section 39, Article III, Texas Constitution. If this  
21 Act does not receive the vote necessary for immediate effect, this  
22 Act takes effect September 1, 2009.