

**House Bill 3481**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. Articles 55.01(a) and (a-1), 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,

SENATE VERSION

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 person with the commission of a felony or misdemeanor:

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

(ii) regardless of whether any statute of limitations exists for the offense and whether any limitations period for the

CONFERENCE

**House Bill 3481**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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 described by Paragraph (A), either ~~and~~:

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

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

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

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

(SECTION 1 CONT). Article 55.01(a-1)

SENATE VERSION

offense has expired, was~~[,] if an indictment or information charging the person with commission of a felony was presented, the indictment or information has been~~ dismissed or quashed and, if the offense was a felony, more than 180 days have elapsed from the date the indictment or information was dismissed or quashed~~[,] and~~:

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

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

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

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

SECTION 2. Article 55.01(a-1), Code of Criminal

CONFERENCE

**House Bill 3481**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

SECTION 2. The change in law made by this Act

SENATE VERSION

Procedure, is repealed.

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

(1) the person is:

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

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

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

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

SECTION \_\_. This Act applies to an expunction of

CONFERENCE

**House Bill 3481**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

applies to a **person seeking expunction** of records relating to an **arrest** regardless of whether the arrest occurred before, on, or after the effective date of this Act.

**No equivalent provision.**

SENATE VERSION

arrest records **and files** for **any criminal offense**:

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

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

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

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

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

(c) The court shall include in an expunction order under this section a listing of each official, agency, or other

CONFERENCE

**House Bill 3481**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

entity of this state or political subdivision of this state and each private entity that there is reason to believe has any record or file that is subject to the order. The court shall also provide in an expunction order under this section that the Department of Public Safety and the Texas Department of Criminal Justice shall:

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

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

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

No equivalent provision.

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

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

- (1) the petitioner was arrested; or
- (2) the offense was alleged to have occurred.

**House Bill 3481**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SENATE VERSION

SECTION \_\_. Subsection (c), Section 3, Article 55.02, Code of Criminal Procedure, is amended to read as follows:

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

No equivalent provision.

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

(a) Except as provided by Subsections (f) and (g), on receipt of the order, each official or agency or other governmental entity named in the order shall:

(1) return all records and files that are subject to the expunction order to the court or in cases other than those described by Section 1a, if removal is impracticable,

CONFERENCE

**House Bill 3481**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

SENATE VERSION

obliterate all portions of the record or file that identify the person who is the subject of the order and notify the court of its action; and  
(2) delete from its public records all index references to the records and files that are subject to the expunction order.

SECTION 4. Same as House version.

CONFERENCE