

By: Veasey

H.B. No. 351

A BILL TO BE ENTITLED

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. Article 55.01, Code of Criminal Procedure, is amended by amending Subsections (a), (a-1), (b), and (c) and adding Subsection (a-2) 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, if the applicable pardon or court order clearly indicates on its face that the pardon or order was granted or rendered on the basis of the person's actual innocence; or

(2) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending

1 and there was no court-ordered community supervision under Article  
2 42.12 for the offense, unless the offense is a Class C misdemeanor,  
3 provided that [~~each of the following conditions exist~~]:

4 (A) regardless of whether any statute of  
5 limitations exists for the offense and whether any limitations  
6 period for the offense has expired, an indictment or information  
7 charging the person with the commission of a felony or misdemeanor  
8 offense arising out of the transaction for which the person was  
9 arrested:

10 (i) has not been presented against the  
11 person at any time following the arrest, and:

12 (a) at least 180 days have elapsed  
13 from the date of arrest if the arrest was for an offense punishable  
14 as a Class C misdemeanor;

15 (b) at least one year has elapsed from  
16 the date of arrest if the arrest was for an offense punishable as a  
17 Class B or A misdemeanor;

18 (c) at least two years have elapsed  
19 from the date of arrest if the arrest was for an offense punishable  
20 as a felony; or

21 (d) the attorney representing the  
22 state certifies that the applicable arrest records and files are  
23 not needed for use in any criminal investigation or prosecution,  
24 including an investigation or prosecution of another person;

25 (ii) [~~for an offense arising out of the~~  
26 ~~transaction for which the person was arrested or,~~] if an indictment  
27 or information charging the person with commission of a misdemeanor

1 ~~[felony]~~ was presented at any time following the arrest, was, ~~the~~  
2 ~~indictment or information has been~~ dismissed or quashed; or

3 (iii) if an indictment or information  
4 charging the person with commission of a felony was presented at any  
5 time following the arrest, was dismissed or quashed, and ~~+~~

6 ~~[(i) the limitations period expired before~~  
7 ~~the date on which a petition for expunction was filed under Article~~  
8 ~~55.02; or~~

9 ~~[(ii)]~~ the court finds that the indictment  
10 or information was dismissed or quashed because the person  
11 completed a pretrial intervention program authorized under Section  
12 76.011, Government Code, ~~or~~ because the presentment had been made  
13 because of mistake, false information, or other similar reason  
14 indicating absence of probable cause at the time of the dismissal to  
15 believe the person committed the offense, or because the indictment  
16 or information ~~it~~ was void; or

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

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

26 (a-1) Notwithstanding any other provision of this article,  
27 a person may not expunge records and files relating to an arrest

1 that occurs pursuant to a warrant issued under Section 21, Article  
2 42.12 [~~Subsection (a)(2)(C), a person's conviction of a felony in~~  
3 ~~the five years preceding the date of the arrest does not affect the~~  
4 ~~person's entitlement to expunction for purposes of an ex parte~~  
5 ~~petition filed on behalf of the person by the director of the~~  
6 ~~Department of Public Safety under Section 2(e), Article 55.02]~~.

7 (a-2) Notwithstanding any other provision of this article,  
8 a person who intentionally or knowingly absconds from the  
9 jurisdiction after being released under Chapter 17 following an  
10 arrest is not eligible under Subsection (a)(2)(A)(i)(a), (b), or  
11 (c) or Subsection (a)(2)(B) for an expunction of the records and  
12 files relating to that arrest.

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

18 (1) the person is:

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

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

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

25 (2) an office of the attorney representing the state  
26 authorized by law to prosecute the offense for which the person was  
27 arrested recommends the expunction to the appropriate district

1 court before the person is tried for the offense, regardless of  
2 whether an indictment or information has been presented against the  
3 person in relation to the offense.

4 (c) A court may not order the expunction of records and  
5 files relating to an arrest for an offense for which a person is  
6 subsequently acquitted, whether by the trial court, a court of  
7 appeals, or the court of criminal appeals, if the offense for which  
8 the person was acquitted arose out of a criminal episode, as defined  
9 by Section 3.01, Penal Code, and the person was convicted of or  
10 remains subject to prosecution for at least one other offense  
11 occurring during the criminal episode.

12 SECTION 2. Article 55.02, Code of Criminal Procedure, is  
13 amended by amending Section 1 and adding Section 1a to read as  
14 follows:

15 Sec. 1. At the request of the defendant and after notice to  
16 the state, the trial court presiding over the case in which the  
17 defendant was acquitted, if the trial court is a district court, or  
18 a district court in the county in which the trial court is located  
19 shall enter an order of expunction for a person entitled to  
20 expunction under Article 55.01(a)(1)(A) [~~article 55.01(a)(1)(a)~~]  
21 not later than the 30th day after the date of the acquittal. Upon  
22 acquittal, the trial court shall advise the defendant of the right  
23 to expunction. The defendant shall provide to the district court  
24 all of the information required in a petition for expunction under  
25 Section 2(b). The attorney for the defendant in the case in which  
26 the defendant was acquitted, if the defendant was represented by  
27 counsel, or the attorney for the state, if the defendant was not

1 represented by counsel, shall prepare the order for the court's  
2 signature.

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

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

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

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

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

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

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

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

12            (1) the petitioner was arrested; or

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

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

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

1 hand-delivered order.

2 SECTION 5. Section 4, Article 55.02, Code of Criminal  
3 Procedure, is amended to read as follows:

4 Sec. 4. (a) If the state establishes that the person who is  
5 the subject of an expunction order is still subject to conviction  
6 for an offense arising out of the transaction for which the person  
7 was arrested because the statute of limitations has not run and  
8 there is reasonable cause to believe that the state may proceed  
9 against the person for the offense, the court may provide in its  
10 expunction order that the law enforcement agency and the  
11 prosecuting attorney responsible for investigating the offense may  
12 retain any records and files that are necessary to the  
13 investigation.

14 (a-1) The court may provide in its expunction order that the  
15 applicable law enforcement agency and prosecuting attorney may  
16 retain the arrest records and files of any person who becomes  
17 entitled to an expunction of those records and files based on the  
18 expiration of a period described by Article 55.01(a)(2)(A)(i)(a),  
19 (b), or (c), but without the certification of the prosecuting  
20 attorney as described by Article 55.01(a)(2)(A)(i)(d).

21 (a-2) In the case of a person who is the subject of an  
22 expunction order on the basis of an acquittal, the court may provide  
23 in the expunction order that the law enforcement agency and the  
24 prosecuting attorney retain records and files if:

25 (1) the records and files are necessary to conduct a  
26 subsequent investigation and prosecution of a person other than the  
27 person who is the subject of the expunction order; or



1           (2) the state establishes that the records and files  
2 are necessary for use in:

3           (A) another criminal case, including a  
4 prosecution, motion to adjudicate or revoke community supervision,  
5 parole revocation hearing, mandatory supervision revocation  
6 hearing, punishment hearing, or bond hearing; or

7           (B) a civil case, including a civil suit or suit  
8 for possession of or access to a child.

9           (b) Unless the person who is the subject of the expunction  
10 order is again arrested for or charged with an offense arising out  
11 of the transaction for which the person was arrested or unless the  
12 court provides for the retention of records and files under  
13 Subsection (a-2) [~~(a) of this section~~], the provisions of Articles  
14 55.03 and 55.04 [~~of this code~~] apply to files and records retained  
15 under this section.

16           SECTION 6. Section 5(a), Article 55.02, Code of Criminal  
17 Procedure, is amended to read as follows:

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

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

26           (2) delete from its public records all index  
27 references to the records and files that are subject to the

1 expunction order.

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

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

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

9 SECTION 8. This Act takes effect immediately if it receives  
10 a vote of two-thirds of all the members elected to each house, as  
11 provided by Section 39, Article III, Texas Constitution. If this  
12 Act does not receive the vote necessary for immediate effect, this  
13 Act takes effect September 1, 2011.