

By: Veasey

H.B. No. 351

Substitute the following for H.B. No. 351:

By: Aliseda

C.S.H.B. No. 351

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

7 (a) A person who has been placed under a custodial or  
8 noncustodial arrest for commission of either a felony or  
9 misdemeanor is entitled to have all records and files relating to  
10 the arrest expunged if:

11 (1) the person is tried for the offense for which the  
12 person was arrested and is:

13 (A) acquitted by the trial court, except as  
14 provided by Subsection (c) [~~of this section~~]; or

15 (B) convicted and subsequently:

16 (i) pardoned; or

17 (ii) otherwise granted relief on the basis  
18 of actual innocence with respect to that offense, if the applicable  
19 pardon or court order clearly indicates on its face that the pardon  
20 or order was granted or rendered on the basis of the person's actual  
21 innocence; or

22 (2) the person has been released and the charge, if  
23 any, has not resulted in a final conviction and is no longer pending  
24 and there was no court-ordered community supervision under Article

1 42.12 for any offense arising out of the transaction for which the  
2 person was arrested, except for a Class C misdemeanor, provided  
3 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 the attorney  
12 representing the state certifies that the applicable arrest records  
13 and files are not needed for use in any criminal investigation or  
14 prosecution, including an investigation or prosecution of another  
15 person; or

16 (ii) [~~for an offense arising out of the~~  
17 ~~transaction for which the person was arrested or,~~ if [~~an~~  
18 ~~indictment or information charging the person with commission of a~~  
19 ~~felony was~~] presented at any time following the arrest, was [~~the~~  
20 ~~indictment or information has been~~] dismissed or quashed, and [~~+~~

21 [~~(i) the limitations period expired before~~  
22 ~~the date on which a petition for expunction was filed under Article~~  
23 ~~55.02, or~~

24 [~~(ii)~~] the court finds that the indictment  
25 or information was dismissed or quashed because the person  
26 completed a pretrial intervention program authorized under Section  
27 76.011, Government Code, [~~or~~] because the presentment had been made

1 because of mistake, false information, or other similar reason  
2 indicating absence of probable cause at the time of the dismissal to  
3 believe the person committed the offense, or because the indictment  
4 or information [~~it~~] was void; or

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

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

14 (a-1) Notwithstanding any other provision of this article,  
15 a person may not expunge records and files relating to an arrest  
16 that occurs pursuant to a warrant issued under Section 21, Article  
17 42.12 [~~Subsection (a)(2)(C), a person's conviction of a felony in~~  
18 ~~the five years preceding the date of the arrest does not affect the~~  
19 ~~person's entitlement to expunction for purposes of an ex parte~~  
20 ~~petition filed on behalf of the person by the director of the~~  
21 ~~Department of Public Safety under Section 2(e), Article 55.02].~~

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

27 (1) the person is:

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

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

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

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

13           (c) A court may not order the expunction of records and  
14 files relating to an arrest for an offense for which a person is  
15 subsequently acquitted, whether by the trial court, a court of  
16 appeals, or the court of criminal appeals, if the offense for which  
17 the person was acquitted arose out of a criminal episode, as defined  
18 by Section 3.01, Penal Code, and the person was convicted of or  
19 remains subject to prosecution for at least one other offense  
20 occurring during the criminal episode.

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

24           Sec. 1. At the request of the defendant and after notice to  
25 the state, the trial court presiding over the case in which the  
26 defendant was acquitted, if the trial court is a district court, or  
27 a district court in the county in which the trial court is located

1 shall enter an order of expunction for a person entitled to  
2 expunction under Article 55.01(a)(1)(A) [~~article 55.01(a)(1)(a)~~]  
3 not later than the 30th day after the date of the acquittal. Upon  
4 acquittal, the trial court shall advise the defendant of the right  
5 to expunction. The defendant shall provide to the district court  
6 all of the information required in a petition for expunction under  
7 Section 2(b). The attorney for the defendant in the case in which  
8 the defendant was acquitted, if the defendant was represented by  
9 counsel, or the attorney for the state, if the defendant was not  
10 represented by counsel, shall prepare the order for the court's  
11 signature.

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

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

25 (c) The court shall include in an expunction order under  
26 this section a listing of each official, agency, or other entity of  
27 this state or political subdivision of this state and each private

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

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

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

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

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

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

21 (1) the petitioner was arrested; or

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

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

25 (c) When the order of expunction is final, the clerk of the  
26 court shall send a certified copy of the order to the Crime Records  
27 Service of the Department of Public Safety and to each official or

1 agency or other governmental entity of this state or of any  
2 political subdivision of this state named in [~~designated by the~~  
3 ~~person who is the subject of~~] the order. The certified copy of the  
4 order must be sent by secure electronic mail, electronic  
5 transmission, or facsimile transmission or otherwise by certified  
6 mail, return receipt requested. In sending the order to a  
7 governmental entity named in the order [~~designated by the person~~],  
8 the clerk may elect to substitute hand delivery for certified mail  
9 under this subsection, but the clerk must receive a receipt for that  
10 hand-delivered order.

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

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

16 (1) return all records and files that are subject to  
17 the expunction order to the court or in cases other than those  
18 described by Section 1a, if removal is impracticable, obliterate  
19 all portions of the record or file that identify the person who is  
20 the subject of the order and notify the court of its action; 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 SECTION 6. This Act applies to an expunction of arrest  
25 records and files for any criminal offense:

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

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

4           SECTION 7. This Act takes effect immediately if it receives  
5 a vote of two-thirds of all the members elected to each house, as  
6 provided by Section 39, Article III, Texas Constitution. If this  
7 Act does not receive the vote necessary for immediate effect, this  
8 Act takes effect September 1, 2011.