

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. Articles 55.01(a), (b), and (c), 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 and there was no court-ordered community supervision under Article 42.12 for any offense except for a Class C misdemeanor, provided that [~~each of the following conditions exist~~]:

(A) regardless of whether any statute of

1 limitations exists for the offense and whether any limitations
2 period for the offense has expired, an indictment or information
3 charging the person with the commission of a felony or misdemeanor
4 offense arising out of the transaction for which the person was
5 arrested:

6 (i) has not been presented against the
7 person at any time following the arrest, and at least 180 days have
8 elapsed from the date of the arrest; or

9 (ii) [~~for an offense arising out of the~~
10 ~~transaction for which the person was arrested or,~~ if [an
11 ~~indictment or information charging the person with commission of a~~
12 ~~felony was~~] presented at any time following the arrest, was [~~the~~
13 ~~indictment or information has been~~] dismissed or quashed, and:

14 (a) at least 180 days have elapsed
15 from the date the indictment or information was dismissed or
16 quashed; and

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

20 [~~(ii)~~] the court finds that the indictment
21 or information was dismissed or quashed because the person
22 completed a pretrial intervention program authorized under Section
23 76.011, Government Code, or because the presentment had been made
24 because of mistake, false information, or other similar reason
25 indicating absence of probable cause at the time of the dismissal to
26 believe the person committed the offense or because it was void; or

27 (B) prosecution of the person for the offense for

1 which the person was arrested is no longer possible because the
2 limitations period has expired [~~the person has been released and~~
3 ~~the charge, if any, has not resulted in a final conviction and is no~~
4 ~~longer pending and there was no court ordered community supervision~~
5 ~~under Article 42.12 for any offense other than a Class C~~
6 ~~misdemeanor, and~~

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

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

14 (1) the person is:

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

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

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

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

27 (c) A court may not order the expunction of records and

1 files relating to an arrest for an offense for which a person is
2 subsequently acquitted, whether by the trial court, a court of
3 appeals, or the court of criminal appeals, if the offense for which
4 the person was acquitted arose out of a criminal episode, as defined
5 by Section 3.01, Penal Code, and the person was convicted of or
6 remains subject to prosecution for at least one other offense
7 occurring during the criminal episode.

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

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

26 Sec. 1a. (a) The trial court presiding over a case in which
27 a defendant is convicted and subsequently pardoned or otherwise

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

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

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

19 (1) return to the court all records and files that are
20 subject to the expunction order; 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 (d) The court shall retain all records and files returned to
25 the court under Subsection (c) until the statute of limitations has
26 run for any civil case or proceeding relating to the wrongful
27 imprisonment of the person subject to the expunction order.

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

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

8 (1) the petitioner was arrested; or

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

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

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

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

27 (a) Except as provided by Subsections (f) and (g), on

1 receipt of the order, each official or agency or other governmental
2 entity named in the order shall:

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

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

11 SECTION 6. Article 55.01(a-1), Code of Criminal Procedure,
12 is repealed.

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

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

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

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