

1-1 By: Veasey (Senate Sponsor - West) H.B. No. 351
1-2 (In the Senate - Received from the House May 13, 2011;
1-3 May 13, 2011, read first time and referred to Committee on Criminal
1-4 Justice; May 24, 2011, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 24, 2011, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 351 By: Ellis

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the expunction of records and files relating to a
1-11 person's arrest.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Article 55.01, Code of Criminal Procedure, is
1-14 amended by amending Subsections (a), (a-1), (b), and (c) and adding
1-15 Subsection (a-2) to read as follows:

1-16 (a) A person who has been placed under a custodial or
1-17 noncustodial arrest for commission of either a felony or
1-18 misdemeanor is entitled to have all records and files relating to
1-19 the arrest expunged if:

1-20 (1) the person is tried for the offense for which the
1-21 person was arrested and is:

1-22 (A) acquitted by the trial court, except as
1-23 provided by Subsection (c) [~~of this section~~]; or

1-24 (B) convicted and subsequently:

1-25 (i) pardoned for a reason other than that
1-26 described by Subparagraph (ii); or

1-27 (ii) pardoned or otherwise granted relief
1-28 on the basis of actual innocence with respect to that offense, if
1-29 the applicable pardon or court order clearly indicates on its face
1-30 that the pardon or order was granted or rendered on the basis of the
1-31 person's actual innocence; or

1-32 (2) the person has been released and the charge, if
1-33 any, has not resulted in a final conviction and is no longer pending
1-34 and there was no court-ordered community supervision under Article
1-35 42.12 for the offense, unless the offense is a Class C misdemeanor,
1-36 provided that [each of the following conditions exist]:

1-37 (A) regardless of whether any statute of
1-38 limitations exists for the offense and whether any limitations
1-39 period for the offense has expired, an indictment or information
1-40 charging the person with the commission of a felony or misdemeanor
1-41 offense arising out of the transaction for which the person was
1-42 arrested:

1-43 (i) has not been presented against the
1-44 person at any time following the arrest, and:

1-45 (a) at least 180 days have elapsed
1-46 from the date of arrest if the arrest was for an offense punishable
1-47 as a Class C misdemeanor;

1-48 (b) at least one year has elapsed from
1-49 the date of arrest if the arrest was for an offense punishable as a
1-50 Class B or A misdemeanor;

1-51 (c) at least three years have elapsed
1-52 from the date of arrest if the arrest was for an offense punishable
1-53 as a felony; or

1-54 (d) the attorney representing the
1-55 state certifies that the applicable arrest records and files are
1-56 not needed for use in any criminal investigation or prosecution,
1-57 including an investigation or prosecution of another person; or

1-58 (ii) [for an offense arising out of the
1-59 transaction for which the person was arrested or,] if [an
1-60 indictment or information charging the person with commission of a
1-61 felony was] presented at any time following the arrest, was[, the
1-62 indictment or information has been] dismissed or quashed, and[+]

1-63 [(i) the limitations period expired before

2-1 ~~the date on which a petition for expunction was filed under Article~~
2-2 ~~55.02, or~~
2-3 ~~[(ii)]~~ the court finds that the indictment
2-4 or information was dismissed or quashed because the person
2-5 completed a pretrial intervention program authorized under Section
2-6 76.011, Government Code, ~~[or]~~ because the presentment had been made
2-7 because of mistake, false information, or other similar reason
2-8 indicating absence of probable cause at the time of the dismissal to
2-9 believe the person committed the offense, or because the indictment
2-10 or information [it] was void; or

2-11 (B) prosecution of the person for the offense for
2-12 which the person was arrested is no longer possible because the
2-13 limitations period has expired [the person has been released and
2-14 the charge, if any, has not resulted in a final conviction and is no
2-15 longer pending and there was no court ordered community supervision
2-16 under Article 42.12 for any offense other than a Class C
2-17 misdemeanor; and

2-18 ~~[(C) the person has not been convicted of a~~
2-19 ~~felony in the five years preceding the date of the arrest].~~

2-20 (a-1) Notwithstanding any other provision of this article,
2-21 a person may not expunge records and files relating to an arrest
2-22 that occurs pursuant to a warrant issued under Section 21, Article
2-23 42.12 [Subsection (a)(2)(C), a person's conviction of a felony in
2-24 the five years preceding the date of the arrest does not affect the
2-25 person's entitlement to expunction for purposes of an ex parte
2-26 petition filed on behalf of the person by the director of the
2-27 Department of Public Safety under Section 2(e), Article 55.02].

2-28 (a-2) Notwithstanding any other provision of this article,
2-29 a person who intentionally or knowingly absconds from the
2-30 jurisdiction after being released under Chapter 17 following an
2-31 arrest is not eligible under Subsection (a)(2)(A)(i)(a), (b), or
2-32 (c) or Subsection (a)(2)(B) for an expunction of the records and
2-33 files relating to that arrest.

2-34 (b) Except as provided by Subsection (c) [of this section],
2-35 a district court may expunge all records and files relating to the
2-36 arrest of a person who has been arrested for commission of a felony
2-37 or misdemeanor under the procedure established under Article 55.02
2-38 [of this code] if:

2-39 (1) the person is:

2-40 (A) ~~[(1)]~~ tried for the offense for which the
2-41 person was arrested;

2-42 (B) ~~[(2)]~~ convicted of the offense; and

2-43 (C) ~~[(3)]~~ acquitted by the court of criminal
2-44 appeals or, if the period for granting a petition for discretionary
2-45 review has expired, by a court of appeals; or

2-46 (2) an office of the attorney representing the state
2-47 authorized by law to prosecute the offense for which the person was
2-48 arrested recommends the expunction to the appropriate district
2-49 court before the person is tried for the offense, regardless of
2-50 whether an indictment or information has been presented against the
2-51 person in relation to the offense.

2-52 (c) A court may not order the expunction of records and
2-53 files relating to an arrest for an offense for which a person is
2-54 subsequently acquitted, whether by the trial court, a court of
2-55 appeals, or the court of criminal appeals, if the offense for which
2-56 the person was acquitted arose out of a criminal episode, as defined
2-57 by Section 3.01, Penal Code, and the person was convicted of or
2-58 remains subject to prosecution for at least one other offense
2-59 occurring during the criminal episode.

2-60 SECTION 2. Article 55.02, Code of Criminal Procedure, is
2-61 amended by amending Section 1 and adding Section 1a to read as
2-62 follows:

2-63 Sec. 1. At the request of the defendant and after notice to
2-64 the state, the trial court presiding over the case in which the
2-65 defendant was acquitted, if the trial court is a district court, or
2-66 a district court in the county in which the trial court is located
2-67 shall enter an order of expunction for a person entitled to
2-68 expunction under Article 55.01(a)(1)(A) [article 55.01(a)(1)(a)]
2-69 not later than the 30th day after the date of the acquittal. Upon

3-1 acquittal, the trial court shall advise the defendant of the right
 3-2 to expunction. The defendant shall provide to the district court
 3-3 all of the information required in a petition for expunction under
 3-4 Section 2(b). The attorney for the defendant in the case in which
 3-5 the defendant was acquitted, if the defendant was represented by
 3-6 counsel, or the attorney for the state, if the defendant was not
 3-7 represented by counsel, shall prepare the order for the court's
 3-8 signature.

3-9 Sec. 1a. (a) The trial court presiding over a case in which
 3-10 a defendant is convicted and subsequently granted relief or
 3-11 pardoned on the basis of actual innocence of the offense of which
 3-12 the defendant was convicted, if the trial court is a district court,
 3-13 or a district court in the county in which the trial court is
 3-14 located shall enter an order of expunction for a person entitled to
 3-15 expunction under Article 55.01(a)(1)(B)(ii) not later than the 30th
 3-16 day after the date the court receives notice of the pardon or other
 3-17 grant of relief. The person shall provide to the district court all
 3-18 of the information required in a petition for expunction under
 3-19 Section 2(b).

3-20 (b) The attorney for the state shall:

3-21 (1) prepare an expunction order under this section for
 3-22 the court's signature; and

3-23 (2) notify the Texas Department of Criminal Justice if
 3-24 the person is in the custody of the department.

3-25 (c) The court shall include in an expunction order under
 3-26 this section a listing of each official, agency, or other entity of
 3-27 this state or political subdivision of this state and each private
 3-28 entity that there is reason to believe has any record or file that
 3-29 is subject to the order. The court shall also provide in an
 3-30 expunction order under this section that:

3-31 (1) the Texas Department of Criminal Justice shall
 3-32 send to the court the documents delivered to the department under
 3-33 Section 8(a), Article 42.09; and

3-34 (2) the Department of Public Safety and the Texas
 3-35 Department of Criminal Justice shall delete or redact, as
 3-36 appropriate, from their public records all index references to the
 3-37 records and files that are subject to the expunction order.

3-38 (d) The court shall retain all documents sent to the court
 3-39 under Subsection (c)(1) until the statute of limitations has run
 3-40 for any civil case or proceeding relating to the wrongful
 3-41 imprisonment of the person subject to the expunction order.

3-42 SECTION 3. Section 2(a), Article 55.02, Code of Criminal
 3-43 Procedure, is amended to read as follows:

3-44 (a) A person who is entitled to expunction of records and
 3-45 files under Article 55.01(a)(1)(B)(i) or 55.01(a)(2) [55.01(a)] or
 3-46 a person who is eligible for expunction of records and files under
 3-47 Article 55.01(b) may file an ex parte petition for expunction in a
 3-48 district court for the county in which:

3-49 (1) the petitioner was arrested; or

3-50 (2) the offense was alleged to have occurred.

3-51 SECTION 4. Section 3(c), Article 55.02, Code of Criminal
 3-52 Procedure, is amended to read as follows:

3-53 (c) When the order of expunction is final, the clerk of the
 3-54 court shall send a certified copy of the order to the Crime Records
 3-55 Service of the Department of Public Safety and to each official or
 3-56 agency or other governmental entity of this state or of any
 3-57 political subdivision of this state named in [designated by the
 3-58 person who is the subject of] the order. The certified copy of the
 3-59 order must be sent by secure electronic mail, electronic
 3-60 transmission, or facsimile transmission or otherwise by certified
 3-61 mail, return receipt requested. In sending the order to a
 3-62 governmental entity named in the order [designated by the person],
 3-63 the clerk may elect to substitute hand delivery for certified mail
 3-64 under this subsection, but the clerk must receive a receipt for that
 3-65 hand-delivered order.

3-66 SECTION 5. Section 4, Article 55.02, Code of Criminal
 3-67 Procedure, is amended to read as follows:

3-68 Sec. 4. (a) If the state establishes that the person who is
 3-69 the subject of an expunction order is still subject to conviction

4-1 for an offense arising out of the transaction for which the person
4-2 was arrested because the statute of limitations has not run and
4-3 there is reasonable cause to believe that the state may proceed
4-4 against the person for the offense, the court may provide in its
4-5 expunction order that the law enforcement agency and the
4-6 prosecuting attorney responsible for investigating the offense may
4-7 retain any records and files that are necessary to the
4-8 investigation.

4-9 (a-1) The court shall provide in its expunction order that
4-10 the applicable law enforcement agency and prosecuting attorney may
4-11 retain the arrest records and files of any person who becomes
4-12 entitled to an expunction of those records and files based on the
4-13 expiration of a period described by Article 55.01(a)(2)(A)(i)(a),
4-14 (b), or (c), but without the certification of the prosecuting
4-15 attorney as described by Article 55.01(a)(2)(A)(i)(d).

4-16 (a-2) In the case of a person who is the subject of an
4-17 expunction order on the basis of an acquittal, the court may provide
4-18 in the expunction order that the law enforcement agency and the
4-19 prosecuting attorney retain records and files if:

4-20 (1) the records and files are necessary to conduct a
4-21 subsequent investigation and prosecution of a person other than the
4-22 person who is the subject of the expunction order; or

4-23 (2) the state establishes that the records and files
4-24 are necessary for use in:

4-25 (A) another criminal case, including a
4-26 prosecution, motion to adjudicate or revoke community supervision,
4-27 parole revocation hearing, mandatory supervision revocation
4-28 hearing, punishment hearing, or bond hearing; or

4-29 (B) a civil case, including a civil suit or suit
4-30 for possession of or access to a child.

4-31 (b) Unless the person who is the subject of the expunction
4-32 order is again arrested for or charged with an offense arising out
4-33 of the transaction for which the person was arrested or unless the
4-34 court provides for the retention of records and files under
4-35 Subsection (a-1) or (a-2) [~~(a) of this section~~], the provisions of
4-36 Articles 55.03 and 55.04 [~~of this code~~] apply to files and records
4-37 retained under this section.

4-38 SECTION 6. Section 5(a), Article 55.02, Code of Criminal
4-39 Procedure, is amended to read as follows:

4-40 (a) Except as provided by Subsections (f) and (g), on
4-41 receipt of the order, each official or agency or other governmental
4-42 entity named in the order shall:

4-43 (1) return all records and files that are subject to
4-44 the expunction order to the court or in cases other than those
4-45 described by Section 1a, if removal is impracticable, obliterate
4-46 all portions of the record or file that identify the person who is
4-47 the subject of the order and notify the court of its action; and

4-48 (2) delete from its public records all index
4-49 references to the records and files that are subject to the
4-50 expunction order.

4-51 SECTION 7. This Act applies to an expunction of arrest
4-52 records and files for any criminal offense:

4-53 (1) that occurred before, on, or after the effective
4-54 date of this Act; or

4-55 (2) for which a pardon or other relief on the basis of
4-56 actual innocence was granted before, on, or after the effective
4-57 date of this Act.

4-58 SECTION 8. This Act takes effect September 1, 2011.

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