

By: Farrar

H.B. No. 605

A BILL TO BE ENTITLED

AN ACT

relating to the consequences of community supervision and to petitions and procedures for the expunction of criminal records and files and to orders of nondisclosure.

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

SECTION 1. This Act may be cited as the Community Supervision and Expunction Reform Act of 2011.

SECTION 2. Article 55.01, Code of Criminal Procedure, is amended by adding Subsections (a-2), (a-3), (a-4), (a-5), and (a-6) to read as follows:

(a-2) A person who has had an order of deferred adjudication community supervision granted under Section 5, Article 42.12, may petition the court under Article 55.02:

(1) if the offense for which the person was placed on deferred adjudication community supervision was a misdemeanor described by Subdivision (2) or (3), or a state jail felony described by Subdivision (4), and is not an offense described by Subsection (a-3)(1) or (2);

(2) on or after the second anniversary of the discharge and dismissal, if the offense for which the person was placed on community supervision was a Class B misdemeanor;

(3) on or after the fifth anniversary of the discharge and dismissal, if the offense for which the person was placed on community supervision was a Class A misdemeanor; or

1 (4) on or after the seventh anniversary of the
2 discharge and dismissal, if the offense for which the person was
3 placed on community supervision was a state jail felony.

4 (a-3) A defendant is not eligible to petition the court for
5 expunction under this subsection if:

6 (1) the offense committed was an offense under Chapter
7 21, 22, 36, 39, or 49, Penal Code;

8 (2) for any crime that has been enhanced by a previous
9 offense; or

10 (3) the person has had an offense previously expunged,
11 other than an offense under the Transportation Code punishable by
12 fine only.

13 (a-4) A person is entitled to petition the court under
14 Article 55.02 only if during the applicable period described by
15 Subsection (a-2)(2) or (3), the person is not convicted of or placed
16 on deferred adjudication community supervision, or charged with any
17 offense other than an offense under the Transportation Code
18 punishable by fine only.

19 (a-5) A person is entitled to petition the court under
20 Article 55.02 only if during the applicable period described by
21 Subsection (a-2)(4), the person is not convicted of or placed on
22 deferred adjudication community supervision, or charged with any
23 offense other than an offense under the Transportation Code
24 punishable by fine only, and the judge has the discretion, but is
25 not required, to grant an order of expunction filed under
26 Subsection (a-2)(4).

27 (a-6) A person not otherwise entitled to petition for

1 expunction under Subsection (a-2) is entitled to have all records
2 and files relating to the custodial or noncustodial arrest of the
3 person for the commission of an offense under the Transportation
4 Code punishable by fine only expunged if the person:

5 (1) committed the offense not less than five years
6 before filing a petition for expunction with respect to the
7 offense; and

8 (2) has not been convicted of or placed on deferred
9 adjudication community supervision, or charged with any other
10 offense in the five years preceding the time of filing the petition.

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

13 (a) A person who is entitled to expunction of records and
14 files under Article 55.01(a) or (a-6) or a person who is eligible
15 for expunction of records and files under Article 55.01(b) may file
16 an ex parte petition for expunction in a district court for the
17 county in which:

18 (1) the petitioner was arrested; or

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

20 SECTION 4. Section 411.081(d), Government Code, is amended
21 to read as follows:

22 (d) Notwithstanding any other provision of this subchapter,
23 if a person is placed on deferred adjudication community
24 supervision under Section 5, Article 42.12, Code of Criminal
25 Procedure, subsequently receives a discharge and dismissal under
26 Section 5(c), Article 42.12, and satisfies the requirements of
27 Subsection (e), the person may petition the court that placed the

1 defendant on deferred adjudication for an order of nondisclosure
 2 under this subsection. Except as provided by Subsection (e), a
 3 person may petition the court under this subsection regardless of
 4 whether the person has been previously placed on deferred
 5 adjudication community supervision for another offense. After
 6 notice to the state and a hearing on whether the person is entitled
 7 to file the petition and issuance of the order is in the best
 8 interest of justice, the court shall issue an order prohibiting
 9 criminal justice agencies from disclosing to the public criminal
 10 history record information related to the offense giving rise to
 11 the deferred adjudication. A criminal justice agency may disclose
 12 criminal history record information that is the subject of the
 13 order only to other criminal justice agencies~~[, for criminal~~
 14 ~~justice or regulatory licensing purposes, an agency or entity~~
 15 ~~listed in Subsection (i),]~~ or the person who is the subject of the
 16 order. A person may petition the court that placed the person on
 17 deferred adjudication for an order of nondisclosure on payment of a
 18 \$28 fee to the clerk of the court in addition to any other fee that
 19 generally applies to the filing of a civil petition. The payment
 20 may be made only on or after:

21 (1) the discharge and dismissal, if the offense for
 22 which the person was placed on deferred adjudication was a
 23 misdemeanor other than a misdemeanor described by Subdivision (2);

24 (2) the second anniversary of the discharge and
 25 dismissal, if the offense for which the person was placed on
 26 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,
 27 25, 42, or 46, Penal Code; or

1 (3) the fifth anniversary of the discharge and
2 dismissal, if the offense for which the person was placed on
3 deferred adjudication was a felony.

4 SECTION 5. The following provision of the Government Code
5 is repealed:

6 (1) Section 411.081(i).

7 SECTION 6. Section 552.1425(b), Government Code, is amended
8 to read as follows:

9 (b) The [~~A district court may issue a warning to a private~~
10 ~~entity for a first violation of Subsection (a). After receiving a~~
11 ~~warning for the first violation, the]~~ private entity is liable to
12 the state for a civil penalty not to exceed \$1,000 for each
13 subsequent violation.

14 SECTION 7. Section 469.001(b), Health and Safety Code, is
15 amended to read as follows:

16 (b) If a defendant successfully completes a drug court
17 program, regardless of whether the defendant was convicted of the
18 offense for which the defendant entered the program or whether the
19 court deferred further proceedings without entering an
20 adjudication of guilt, after notice to the state and a hearing on
21 whether the defendant is otherwise entitled to the petition and
22 whether issuance of the order is in the best interest of justice,
23 the court shall enter an order of nondisclosure under Section
24 411.081, Government Code, as if the defendant had received a
25 discharge and dismissal under Section 5(c), Article 42.12, Code of
26 Criminal Procedure, or an expunction under Article 55.01, Code of
27 Criminal Procedure, with respect to all records and files related

1 to the defendant's arrest for the offense for which the defendant
2 entered the program if the defendant:

3 (1) has not been previously convicted of a felony
4 offense; and

5 (2) is not convicted for any other felony offense
6 before the second anniversary of the defendant's successful
7 completion of the program.

8 SECTION 8. The change in law made by this Act to Chapter 55,
9 Code of Criminal Procedure, applies to a person seeking expunction
10 of records and files relating to an arrest on or after the effective
11 date of this Act, regardless of whether the arrest occurred before,
12 on, or after the effective date of this Act.

13 SECTION 9. This Act takes effect September 1, 2011.