

By: Dutton

H.B. No. 913

A BILL TO BE ENTITLED

AN ACT

relating to the automatic expunction of criminal records.

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

SECTION 1. Article 55.01(a), Code of Criminal Procedure, is 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 pardoned; or

(2) either ~~[each]~~ of the following conditions exists ~~[exist]~~:

(A) an indictment, complaint, or information charging the person with commission of an offense ~~[a felony]~~ has not been presented against the person for an offense arising out of the transaction for which the person was arrested before the second anniversary of the date of the arrest; or

(B) [7] if an indictment, complaint, or information charging the person with commission of an offense ~~[a felony]~~ was presented, the indictment or information has been

1 dismissed or quashed ~~[, and,~~

2 ~~[(i) the limitations period expired before~~  
3 ~~the date on which a petition for expunction was filed under Article~~  
4 ~~55.02; or~~

5 ~~[(ii) the court finds that the indictment~~  
6 ~~or information was dismissed or quashed because the person~~  
7 ~~completed a pretrial intervention program authorized under Section~~  
8 ~~76.011, Government Code, or because the presentment had been made~~  
9 ~~because of mistake, false information, or other similar reason~~  
10 ~~indicating absence of probable cause at the time of the dismissal to~~  
11 ~~believe the person committed the offense or because it was void;~~

12 ~~[(B) the person has been released and the charge,~~  
13 ~~if any, has not resulted in a final conviction and is no longer~~  
14 ~~pending and there was no court ordered community supervision under~~  
15 ~~Article 42.12 for any offense other than a Class C misdemeanor; and~~

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

18 SECTION 2. Section 1, Article 55.02, Code of Criminal  
19 Procedure, is amended to read as follows:

20 Sec. 1. (a) The ~~[At the request of the defendant and after~~  
21 ~~notice to the state, the]~~ trial court ~~[presiding over the case in~~  
22 ~~which the defendant was acquitted, if the trial court is a district~~  
23 ~~court, or a district court in the county in which the trial court is~~  
24 ~~located]~~ shall enter an order of expunction for a person entitled to  
25 expunction because:

26 (1) the person was acquitted;

27 (2) the person was pardoned; or

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

11           (b) The attorney representing the state whose office would  
12 have prosecuted the offense shall bring a motion for expunction for  
13 a person who was arrested but against whom an indictment,  
14 complaint, or information is not filed before the second  
15 anniversary of the date of arrest.

16           (c) The court shall enter an order of expunction under this  
17 section not later than the 30th day after the date of acquittal,  
18 pardon, dismissal, or filing of the motion by the attorney  
19 representing the state. The court shall include in the order a  
20 listing of each official, agency, or other entity of this state or  
21 political subdivision of this state and each private entity that  
22 there is reason to believe has any record or file that is subject to  
23 the order.

24           SECTION 3. Section 2a, Article 55.02, Code of Criminal  
25 Procedure, is amended by adding Subsection (e) to read as follows:

26           (e) The director of the Department of Public Safety or the  
27 director's authorized representative may file on behalf of a person

1 under this section the application described by Subsection (a).  
2 The application must be verified and must include all of the  
3 information otherwise required of an application under this  
4 section, including the information described by Subsections (c)(1)  
5 and (3). The director of the Department of Public Safety or the  
6 director's authorized representative shall forward a copy of the  
7 application to the district court for the county in which the person  
8 resides and shall request the court to enter an order directing  
9 expunction based on an entitlement to expunction under Article  
10 55.01(d). On receipt of a request under this subsection, the court  
11 shall, without holding a hearing on the matter, enter a final order  
12 directing expunction.

13 SECTION 4. Sections 3(a), (c), and (d), Article 55.02, Code  
14 of Criminal Procedure, are amended to read as follows:

15 (a) In an order of expunction issued under this article, the  
16 court shall require any state agency that sent information  
17 concerning the arrest to a central federal depository to request  
18 the depository to return all records and files subject to the order  
19 of expunction. A [The] person who is the subject of an [the]  
20 expunction order under Section 2a, or an agency protesting the  
21 expunction, may appeal the court's decision in the same manner as in  
22 other civil cases.

23 (c) When the order of expunction is final, the clerk of the  
24 court shall send a certified copy of the order to the Crime Records  
25 Service of the Department of Public Safety and to each official or  
26 agency or other governmental entity of this state or of any  
27 political subdivision of this state named in [~~designated by the~~]

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

9 (d) Any returned receipts received by the clerk from  
10 ~~[notices of the hearing and]~~ copies of the order shall be maintained  
11 in the file on the proceedings under this chapter.

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

14 Sec. 4. (a) If the state establishes that the person who is  
15 the subject of an expunction order is still subject to conviction  
16 for an offense arising out of the transaction for which the person  
17 was arrested because the statute of limitations has not run and  
18 there is reasonable cause to believe that the state may proceed  
19 against the person for the offense, the court may provide in its  
20 order that the law enforcement agency and the prosecuting attorney  
21 responsible for investigating the offense may retain any records  
22 and files that are necessary to the investigation.

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

27 (1) the records and files are necessary to conduct a

1 subsequent investigation and prosecution of a person other than the  
2 person who is the subject of the expunction order; or

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

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

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

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

18 SECTION 6. Section 5(c), Article 55.02, Code of Criminal  
19 Procedure, is amended to read as follows:

20 (c) Except in the case of a person who is the subject of an  
21 expunction order based on an entitlement under Article 55.01(d) and  
22 except as provided by Subsection (g), if an order of expunction is  
23 issued under this article, the court records concerning expunction  
24 proceedings are not open for inspection by anyone except the person  
25 who is the subject of the order unless the order permits retention  
26 of a record under Section 4(a) [~~4 of this article~~] and the person is  
27 again arrested for or charged with an offense arising out of the

1 transaction for which the person was arrested or unless the court  
2 provides for the retention of records and files under Section 4(b)  
3 ~~[4(a) of this article]~~. The clerk of the court issuing the order  
4 shall obliterate all public references to the proceeding and  
5 maintain the files or other records in an area not open to  
6 inspection.

7 SECTION 7. Section 411.151(b), Government Code, is amended  
8 to read as follows:

9 (b) If a ~~[A person may petition for the expunction of a DNA~~  
10 ~~record under the procedures established under Article 55.02, Code~~  
11 ~~of Criminal Procedure, if the]~~ person is entitled under Article  
12 55.01, Code of Criminal Procedure, to the expunction of records  
13 relating to the offense to which a a ~~[the]~~ DNA record is related, the  
14 trial court shall enter an order of expunction of the DNA record  
15 under Section 1(a), Article 55.02 ~~[under Article 55.01]~~, Code of  
16 Criminal Procedure, or the attorney representing the state whose  
17 office would have prosecuted the offense shall bring a motion for  
18 expunction of the DNA record under Section 1(b) of that article, as  
19 applicable.

20 SECTION 8. The following provisions of the Code of Criminal  
21 Procedure are repealed:

- 22 (1) Subsection (a-1), Article 55.01;
- 23 (2) Section 2, Article 55.02;
- 24 (3) Article 55.05; and
- 25 (4) Article 102.006.

26 SECTION 9. (a) This Act applies only to the expunction of  
27 arrest records related to:

1           (1) a criminal offense for which an acquittal occurred  
2 on or after the effective date of this Act;

3           (2) a charge for an offense that was dismissed on or  
4 after the effective date of this Act; or

5           (3) an arrest made on or after the effective date of  
6 this Act.

7           (b) Expunction for an acquittal, dismissal, or arrest that  
8 occurred before the effective date of this Act is governed by the  
9 law in effect at that time, and the former law is continued in  
10 effect for that purpose.

11           SECTION 10. This Act takes effect September 1, 2011.