

By: Kolkhorst

H.B. No. 2318

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the right to an expunction of records and files relating
3 to a person's arrest.

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

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

16 (2) each of the following conditions exist:

17 (A) an indictment, ~~or~~ information, or
18 complaint charging the person with the commission of a felony or
19 misdemeanor arising out of the transaction for which the person was
20 arrested:

21 (i) has not been presented against the
22 person and:

23 (a) for an arrest based on a felony,
24 the limitations period expired before the date on which a petition

1 for expunction was filed under Article 55.02 or, for an arrest based
2 on a misdemeanor, at least 180 days have elapsed from the date of
3 the arrest; or

4 (b) in response to the petition for
5 expunction, the court finds by a preponderance of the evidence that
6 the indictment, information, or complaint has not been presented
7 against the person because of mistake, false information, or other
8 similar reason indicating absence of probable cause to believe the
9 person committed the offense; or

10 (ii) has been ~~[for an offense arising out of~~
11 ~~the transaction for which the person was arrested or, if an~~
12 ~~indictment or information charging the person with commission of a~~
13 ~~felony was]~~ presented against the person, but was subsequently ~~[the~~
14 ~~indictment or information has been]~~ dismissed or quashed, and:

15 (a) for an arrest based on a felony,
16 ~~[(i)]~~ the limitations period expired before the date on which a
17 petition for expunction was filed under Article 55.02 or, for an
18 arrest based on a misdemeanor, at least 180 days have elapsed from
19 the date of the arrest; or

20 (b) in response to the petition for
21 expunction, [(ii)] the court finds by a preponderance of the
22 evidence that the indictment, [or] information, or complaint was
23 dismissed or quashed because the person successfully completed a
24 pretrial intervention program authorized under Section 76.011,
25 Government Code, because the person received a discharge and
26 dismissal with respect to the offense under Section 20(a), Article
27 42.12, [or] because the presentment had been made because of

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

5 (B) the person has been released and:

6 (i) the charge, if any, has not resulted in
7 a final conviction and is no longer pending; and

8 (ii) there was no court-ordered [~~court~~
9 ~~ordered~~] community supervision under Article 42.12 for any offense
10 other than for an offense punishable as a Class C misdemeanor or an
11 offense with respect to which the person received a discharge and
12 dismissal under Section 20(a), Article 42.12; and

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

15 SECTION 2. Section 20(a), Article 42.12, Code of Criminal
16 Procedure, is amended to read as follows:

17 (a) At any time after the defendant has satisfactorily
18 completed one-third of the original community supervision period or
19 two years of community supervision, whichever is less, the period
20 of community supervision may be reduced or terminated by the
21 judge. On completion of one-half of the original community
22 supervision period or two years of community supervision, whichever
23 is more, the judge shall review the defendant's record and consider
24 whether to reduce or terminate the period of community supervision,
25 unless the defendant is delinquent in paying required restitution,
26 fines, costs, or fees that the defendant has the ability to pay or
27 the defendant has not completed court-ordered counseling or

1 treatment. Before conducting the review, the judge shall notify
2 the attorney representing the state and the defendant. If the judge
3 determines that the defendant has failed to satisfactorily fulfill
4 the conditions of community supervision, the judge shall advise the
5 defendant in writing of the requirements for satisfactorily
6 fulfilling those conditions. Upon the satisfactory fulfillment of
7 the conditions of community supervision, and the expiration of the
8 period of community supervision, the judge, by order duly entered,
9 shall amend or modify the original sentence imposed, if necessary,
10 to conform to the community supervision period and shall discharge
11 the defendant. If the judge discharges the defendant under this
12 section, the judge may set aside the verdict or permit the defendant
13 to withdraw the defendant's plea, and shall dismiss the accusation,
14 complaint, information or indictment against the defendant. The
15 defendant [~~who~~] shall thereafter be released from all penalties
16 and disabilities resulting from the offense or crime of which the
17 defendant has been convicted or to which the defendant has pleaded
18 guilty, except that, unless the defendant obtains an expunction of
19 the underlying arrest under Chapter 55:

20 (1) proof of the conviction or plea of guilty shall be
21 made known to the judge should the defendant again be convicted of
22 any criminal offense; and

23 (2) if the defendant is an applicant for a license or
24 is a licensee under Chapter 42, Human Resources Code, the Health and
25 Human Services Commission may consider the fact that the defendant
26 previously has received community supervision under this article in
27 issuing, renewing, denying, or revoking a license under that

1 chapter.

2 SECTION 3. The change in law made by this Act applies to a
3 person seeking expunction of records and files relating to an
4 arrest regardless of whether the arrest occurred before, on, or
5 after the effective date of this Act.

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