

By: West

S.B. No. 462

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. Article 55.01, Code of Criminal Procedure, is amended by amending Subsections (a) and (a-1) and adding Subsection (a-2) 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) 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 arising out of the transaction for which the person was arrested, except for a Class C misdemeanor, provided that ~~[each of the following conditions exist]~~:

(A) regardless of whether any statute of limitations exists for the offense and whether any limitations

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

5 (i) has not been presented against the  
6 person at any time following the arrest, and:

7 (a) at least two years have elapsed  
8 from the date of arrest; or

9 (b) the attorney representing the  
10 state certifies that the applicable arrest records and files are  
11 not needed for use in any criminal investigation or prosecution,  
12 including an investigation or prosecution of another person; or

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

18 [~~(i) the limitations period expired before~~  
19 ~~the date on which a petition for expunction was filed under Article~~  
20 ~~55.02, or~~

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

1 or information ~~[~~it~~]~~ was void; or

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

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

11 (a-1) Notwithstanding any other provision of this article,  
12 a person may not expunge records and files relating to an arrest  
13 that occurs pursuant to a warrant issued under Section 21, Article  
14 42.12 ~~[Subsection (a)(2)(C), a person's conviction of a felony in~~  
15 ~~the five years preceding the date of the arrest does not affect the~~  
16 ~~person's entitlement to expunction for purposes of an ex parte~~  
17 ~~petition filed on behalf of the person by the director of the~~  
18 ~~Department of Public Safety under Section 2(e), Article 55.02].~~

19 (a-2) Notwithstanding any other provision of this article,  
20 a defendant who intentionally or knowingly absconds from the  
21 jurisdiction after being released following arrest according to  
22 Chapter 17 is not eligible for an expunction under Subsection  
23 (a)(2)(A)(i)(a) or Subsection (a)(2)(B).

24 SECTION 2. Section 4, Article 55.02, Code of Criminal  
25 Procedure, is amended to read as follows:

26 Sec. 4. (a) If the state establishes that the person who is  
27 the subject of an expunction order is still subject to conviction

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

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

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

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

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

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

1 hearing, punishment hearing, or bond hearing; or

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

4 (b) Unless the person who is the subject of the expunction  
5 order is again arrested for or charged with an offense arising out  
6 of the transaction for which the person was arrested or unless the  
7 court provides for the retention of records and files under  
8 Subsection (a-2) [~~(a) of this section~~], the provisions of Articles  
9 55.03 and 55.04 [~~of this code~~] apply to files and records retained  
10 under this section.

11 SECTION 3. This Act applies to an expunction of arrest  
12 records and files for any criminal offense that occurred before,  
13 on, or after the effective date of this Act.

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