

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 the offense, unless the offense is 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 period for the offense has expired, an indictment or information

1 charging the person with the commission of a misdemeanor offense
2 based on the person's arrest or charging the person with the
3 commission of any felony offense arising out of the same
4 transaction for which the person was arrested:

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

7 (a) at least 180 days have elapsed
8 from the date of arrest if the arrest for which the expunction was
9 sought was for an offense punishable as a Class C misdemeanor and if
10 there was no felony charge arising out of the same transaction for
11 which the person was arrested;

12 (b) at least one year has elapsed from
13 the date of arrest if the arrest for which the expunction was sought
14 was for an offense punishable as a Class B or A misdemeanor and if
15 there was no felony charge arising out of the same transaction for
16 which the person was arrested;

17 (c) at least three years have elapsed
18 from the date of arrest if the arrest for which the expunction was
19 sought was for an offense punishable as a felony or if there was a
20 felony charge arising out of the same transaction for which the
21 person was arrested; or

22 (d) the attorney representing the
23 state certifies that the applicable arrest records and files are
24 not needed for use in any criminal investigation or prosecution,
25 including an investigation or prosecution of another person; or

26 (ii) ~~[for an offense arising out of the~~
27 ~~transaction for which the person was arrested or,~~ if [an

~~indictment or information charging the person with commission of a~~
~~felony was~~] presented at any time following the arrest, was[, ~~the~~
~~indictment or information has been~~] dismissed or quashed, and[+]

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

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

(B) prosecution of the person for the offense for
which the person was arrested is no longer possible because the
limitations period has expired [~~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 other than a Class C~~
~~misdemeanor, and~~

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

(a-1) Notwithstanding any other provision of this article,
a person may not expunge records and files relating to an arrest
that occurs pursuant to a warrant issued under Section 21, Article
42.12 [~~Subsection (a)(2)(C), a person's conviction of a felony in~~

~~the five years preceding the date of the arrest does not affect the person's entitlement to expunction for purposes of an ex parte petition filed on behalf of the person by the director of the Department of Public Safety under Section 2(e), Article 55.02].~~

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

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

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

(a-1) The court shall provide in its expunction order that the applicable law enforcement agency and prosecuting attorney may retain the arrest records and files of any person who becomes entitled to an expunction of those records and files based on the expiration of a period described by Article 55.01(a)(2)(A)(i)(a),

1 (b), or (c), but without the certification of the prosecuting
2 attorney as described by Article 55.01(a)(2)(A)(i)(d).

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

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

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

12 (A) another criminal case, including a
13 prosecution, motion to adjudicate or revoke community supervision,
14 parole revocation hearing, mandatory supervision revocation
15 hearing, punishment hearing, or bond hearing; or

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

18 (b) Unless the person who is the subject of the expunction
19 order is again arrested for or charged with an offense arising out
20 of the transaction for which the person was arrested or unless the
21 court provides for the retention of records and files under
22 Subsection (a-1) or (a-2) [~~(a) of this section~~], the provisions of
23 Articles 55.03 and 55.04 [~~of this code~~] apply to files and records
24 retained under this section.

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

1 SECTION 4. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 462 passed the Senate on May 2, 2011, by the following vote: Yeas 26, Nays 4; and that the Senate concurred in House amendments on May 27, 2011, by the following vote: Yeas 26, Nays 5.

Secretary of the Senate

I hereby certify that S.B. No. 462 passed the House, with amendments, on May 25, 2011, by the following vote: Yeas 147, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor