

By: West  
(Veasey, Gallego)

S.B. No. 462

Substitute the following for S.B. No. 462:

By: Gallego

C.S.S.B. No. 462

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the expunction of records and files relating to a  
3 person's arrest.

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

5 SECTION 1. Article 55.01, Code of Criminal Procedure, is  
6 amended by amending Subsections (a) and (a-1) and adding Subsection  
7 (a-2) to read as follows:

8 (a) A person who has been placed under a custodial or  
9 noncustodial arrest for commission of either a felony or  
10 misdemeanor is entitled to have all records and files relating to  
11 the arrest expunged if:

12 (1) the person is tried for the offense for which the  
13 person was arrested and is:

14 (A) acquitted by the trial court, except as  
15 provided by Subsection (c) [~~of this section~~]; or

16 (B) convicted and subsequently pardoned; or

17 (2) the person has been released and the charge, if  
18 any, has not resulted in a final conviction and is no longer pending  
19 and there was no court-ordered community supervision under Article  
20 42.12 for the offense, unless the offense is a Class C misdemeanor,  
21 provided that [~~each of the following conditions exist~~]:

22 (A) regardless of whether any statute of  
23 limitations exists for the offense and whether any limitations  
24 period for the offense has expired, an indictment or information

1 charging the person with the commission of a felony or misdemeanor  
2 offense arising out of the transaction for which the person was  
3 arrested:

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

6 (a) at least 180 days have elapsed  
7 from the date of arrest if the arrest was for an offense punishable  
8 as a Class C misdemeanor;

9 (b) at least one year has elapsed from  
10 the date of arrest if the arrest was for an offense punishable as a  
11 Class B or A misdemeanor;

12 (c) at least three years have elapsed  
13 from the date of arrest if the arrest was for an offense punishable  
14 as a felony; or

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

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

24 [~~(i) the limitations period expired before~~  
25 ~~the date on which a petition for expunction was filed under Article~~  
26 ~~55.02, or~~

27 [~~(ii)~~] the court finds that the indictment

1 or information was dismissed or quashed because the person  
2 completed a pretrial intervention program authorized under Section  
3 76.011, Government Code, [~~or~~] because the presentment had been made  
4 because of mistake, false information, or other similar reason  
5 indicating absence of probable cause at the time of the dismissal to  
6 believe the person committed the offense, or because the indictment  
7 or information [~~it~~] was void; or

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

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

17 (a-1) Notwithstanding any other provision of this article,  
18 a person may not expunge records and files relating to an arrest  
19 that occurs pursuant to a warrant issued under Section 21, Article  
20 42.12 [~~Subsection (a)(2)(C), a person's conviction of a felony in~~  
21 ~~the five years preceding the date of the arrest does not affect the~~  
22 ~~person's entitlement to expunction for purposes of an ex parte~~  
23 ~~petition filed on behalf of the person by the director of the~~  
24 ~~Department of Public Safety under Section 2(e), Article 55.02)].~~

25 (a-2) Notwithstanding any other provision of this article,  
26 a person who intentionally or knowingly absconds from the  
27 jurisdiction after being released under Chapter 17 following an

1 arrest is not eligible under Subsection (a)(2)(A)(i)(a), (b), or  
2 (c) or Subsection (a)(2)(B) for an expunction of the records and  
3 files relating to that arrest.

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

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

16 (a-1) The court shall provide in its expunction order that  
17 the applicable law enforcement agency and prosecuting attorney may  
18 retain the arrest records and files of any person who becomes  
19 entitled to an expunction of those records and files based on the  
20 expiration of a period described by Article 55.01(a)(2)(A)(i)(a),  
21 (b), or (c), but without the certification of the prosecuting  
22 attorney as described by Article 55.01(a)(2)(A)(i)(d).

23 (a-2) 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 (b) Unless the person who is the subject of the expunction  
12 order is again arrested for or charged with an offense arising out  
13 of the transaction for which the person was arrested or unless the  
14 court provides for the retention of records and files under  
15 Subsection (a-1) or (a-2) [~~(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 3. This Act applies to an expunction of arrest  
19 records and files for any criminal offense that occurred before,  
20 on, or after the effective date of this Act.

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