

1-1 By: West S.B. No. 462
1-2 (In the Senate - Filed January 31, 2011; February 14, 2011,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 April 18, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 2; April 18, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 462 By: Ellis

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the expunction of records and files relating to a
1-11 person's arrest.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Subsections (a) and (a-1), Article 55.01, Code
1-14 of Criminal Procedure, are amended to read as follows:

1-15 (a) A person who has been placed under a custodial or
1-16 noncustodial arrest for commission of either a felony or
1-17 misdemeanor is entitled to have all records and files relating to
1-18 the arrest expunged if:

1-19 (1) the person is tried for the offense for which the
1-20 person was arrested and is:

1-21 (A) acquitted by the trial court, except as
1-22 provided by Subsection (c) ~~[of this section]~~; or

1-23 (B) convicted and subsequently pardoned; or

1-24 (2) the person has been released and the charge, if
1-25 any, has not resulted in a final conviction and is no longer pending
1-26 and there was no court-ordered community supervision under Article
1-27 42.12 for any offense arising out of the transaction for which the
1-28 person was arrested, except for a Class C misdemeanor, provided
1-29 that [each of the following conditions exist]:

1-30 (A) regardless of whether any statute of
1-31 limitations exists for the offense and whether any limitations
1-32 period for the offense has expired, an indictment or information
1-33 charging the person with the commission of a felony or misdemeanor
1-34 offense arising out of the transaction for which the person was
1-35 arrested:

1-36 (i) has not been presented against the
1-37 person at any time following the arrest, and:

1-38 (a) at least two years have elapsed
1-39 from the date of arrest; or

1-40 (b) the attorney representing the
1-41 state certifies that the applicable arrest records and files are
1-42 not needed for use in any criminal investigation or prosecution,
1-43 including an investigation or prosecution of another person; or

1-44 (ii) ~~[for an offense arising out of the~~
1-45 ~~transaction for which the person was arrested or,] if [an~~
1-46 ~~indictment or information charging the person with commission of a~~
1-47 ~~felony was] presented at any time following the arrest, was [the~~
1-48 ~~indictment or information has been] dismissed or quashed, and [+~~

1-49 ~~[(i) the limitations period expired before~~
1-50 ~~the date on which a petition for expunction was filed under Article~~
1-51 ~~55.02; or~~

1-52 ~~[(ii)]~~ the court finds that the indictment
1-53 or information was dismissed or quashed because the person
1-54 completed a pretrial intervention program authorized under Section
1-55 76.011, Government Code, ~~[or]~~ because the presentment had been made
1-56 because of mistake, false information, or other similar reason
1-57 indicating absence of probable cause at the time of the dismissal to
1-58 believe the person committed the offense, or because the indictment
1-59 or information [it] was void; or

1-60 (B) prosecution of the person for the offense for
1-61 which the person was arrested is no longer possible because the
1-62 limitations period has expired [the person has been released and
1-63 the charge, if any, has not resulted in a final conviction and is no

2-1 ~~longer pending and there was no court ordered community supervision~~
2-2 ~~under Article 42.12 for any offense other than a Class C~~
2-3 ~~misdemeanor; and~~

2-4 ~~[(C) the person has not been convicted of a~~
2-5 ~~felony in the five years preceding the date of the arrest].~~

2-6 (a-1) Notwithstanding any other provision of this article,
2-7 a person may not expunge records and files relating to an arrest
2-8 that occurs pursuant to a warrant issued under Section 21, Article
2-9 42.12 [Subsection (a)(2)(C), a person's conviction of a felony in
2-10 the five years preceding the date of the arrest does not affect the
2-11 person's entitlement to expunction for purposes of an ex parte
2-12 petition filed on behalf of the person by the director of the
2-13 Department of Public Safety under Section 2(e), Article 55.02].

2-14 SECTION 2. Section 4, Article 55.02, Code of Criminal
2-15 Procedure, is amended to read as follows:

2-16 Sec. 4. (a) If the state establishes that the person who is
2-17 the subject of an expunction order is still subject to conviction
2-18 for an offense arising out of the transaction for which the person
2-19 was arrested because the statute of limitations has not run and
2-20 there is reasonable cause to believe that the state may proceed
2-21 against the person for the offense, the court may provide in its
2-22 expunction order that the law enforcement agency and the
2-23 prosecuting attorney responsible for investigating the offense may
2-24 retain any records and files that are necessary to the
2-25 investigation.

2-26 (a-1) The court may provide in its expunction order that the
2-27 applicable law enforcement agency and prosecuting attorney may
2-28 retain the arrest records and files of any person who becomes
2-29 entitled to an expunction of those records and files based on the
2-30 expiration of the two-year period described by Article
2-31 55.01(a)(2)(A)(i)(a) but without the certification of the
2-32 prosecuting attorney as described by Article 55.01(a)(2)(A)(i)(b).

2-33 (a-2) In the case of a person who is the subject of an
2-34 expunction order on the basis of an acquittal, the court may provide
2-35 in the expunction order that the law enforcement agency and the
2-36 prosecuting attorney retain records and files if:

2-37 (1) the records and files are necessary to conduct a
2-38 subsequent investigation and prosecution of a person other than the
2-39 person who is the subject of the expunction order; or

2-40 (2) the state establishes that the records and files
2-41 are necessary for use in:

2-42 (A) another criminal case, including a
2-43 prosecution, motion to adjudicate or revoke community supervision,
2-44 parole revocation hearing, mandatory supervision revocation
2-45 hearing, punishment hearing, or bond hearing; or

2-46 (B) a civil case, including a civil suit or suit
2-47 for possession of or access to a child.

2-48 (b) Unless the person who is the subject of the expunction
2-49 order is again arrested for or charged with an offense arising out
2-50 of the transaction for which the person was arrested or unless the
2-51 court provides for the retention of records and files under
2-52 Subsection (a-2) [~~(a) of this section~~], the provisions of Articles
2-53 55.03 and 55.04 [~~of this code~~] apply to files and records retained
2-54 under this section.

2-55 SECTION 3. This Act applies to an expunction of arrest
2-56 records and files for any criminal offense that occurred before,
2-57 on, or after the effective date of this Act.

2-58 SECTION 4. This Act takes effect immediately if it receives
2-59 a vote of two-thirds of all the members elected to each house, as
2-60 provided by Section 39, Article III, Texas Constitution. If this
2-61 Act does not receive the vote necessary for immediate effect, this
2-62 Act takes effect September 1, 2011.

2-63 * * * * *