

SENATE AMENDMENTS

2nd Printing

By: Veasey

H.B. No. 351

A BILL TO BE ENTITLED

AN ACT

1
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), (a-1), (b), and (c) and adding
7 Subsection (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:

17 (i) pardoned; or

18 (ii) otherwise granted relief on the basis
19 of actual innocence with respect to that offense, if the applicable
20 pardon or court order clearly indicates on its face that the pardon
21 or order was granted or rendered on the basis of the person's actual
22 innocence; or

23 (2) the person has been released and the charge, if
24 any, has not resulted in a final conviction and is no longer pending

1 and there was no court-ordered community supervision under Article
2 42.12 for the offense, unless the offense is a Class C misdemeanor,
3 provided that [~~each of the following conditions exist~~]:

4 (A) regardless of whether any statute of
5 limitations exists for the offense and whether any limitations
6 period for the offense has expired, an indictment or information
7 charging the person with the commission of a felony or misdemeanor
8 offense arising out of the transaction for which the person was
9 arrested:

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

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

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

18 (c) at least two years have elapsed
19 from the date of arrest if the arrest was for an offense punishable
20 as a felony; or

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

25 (ii) [~~for an offense arising out of the~~
26 ~~transaction for which the person was arrested or,~~] if an indictment
27 or information charging the person with commission of a misdemeanor

1 ~~[felony]~~ was presented at any time following the arrest, was~~[, the~~
2 ~~indictment or information has been]~~ dismissed or quashed; or
3 (iii) if an indictment or information
4 charging the person with commission of a felony was presented at any
5 time following the arrest, was dismissed or quashed, and~~[+~~
6 ~~[(i) the limitations period expired before~~
7 ~~the date on which a petition for expunction was filed under Article~~
8 ~~55.02, or~~
9 ~~[(ii)]~~ the court finds that the indictment
10 or information was dismissed or quashed because the person
11 completed a pretrial intervention program authorized under Section
12 76.011, Government Code, ~~[or]~~ because the presentment had been made
13 because of mistake, false information, or other similar reason
14 indicating absence of probable cause at the time of the dismissal to
15 believe the person committed the offense, or because the indictment
16 or information ~~[it]~~ was void; or
17 (B) prosecution of the person for the offense for
18 which the person was arrested is no longer possible because the
19 limitations period has expired ~~[the person has been released and~~
20 ~~the charge, if any, has not resulted in a final conviction and is no~~
21 ~~longer pending and there was no court ordered community supervision~~
22 ~~under Article 42.12 for any offense other than a Class C~~
23 ~~misdemeanor, and~~
24 ~~[(C) the person has not been convicted of a~~
25 ~~felony in the five years preceding the date of the arrest]~~.
26 (a-1) Notwithstanding any other provision of this article,
27 a person may not expunge records and files relating to an arrest

1 that occurs pursuant to a warrant issued under Section 21, Article
2 42.12 [~~Subsection (a)(2)(C), a person's conviction of a felony in~~
3 ~~the five years preceding the date of the arrest does not affect the~~
4 ~~person's entitlement to expunction for purposes of an ex parte~~
5 ~~petition filed on behalf of the person by the director of the~~
6 ~~Department of Public Safety under Section 2(e), Article 55.02]~~.

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

13 (b) Except as provided by Subsection (c) [~~of this section~~],
14 a district court may expunge all records and files relating to the
15 arrest of a person who has been arrested for commission of a felony
16 or misdemeanor under the procedure established under Article 55.02
17 [~~of this code~~] if:

18 (1) the person is:

19 (A) [~~(1)~~] tried for the offense for which the
20 person was arrested;

21 (B) [~~(2)~~] convicted of the offense; and

22 (C) [~~(3)~~] acquitted by the court of criminal
23 appeals or, if the period for granting a petition for discretionary
24 review has expired, by a court of appeals; or

25 (2) an office of the attorney representing the state
26 authorized by law to prosecute the offense for which the person was
27 arrested recommends the expunction to the appropriate district

1 court before the person is tried for the offense, regardless of
2 whether an indictment or information has been presented against the
3 person in relation to the offense.

4 (c) A court may not order the expunction of records and
5 files relating to an arrest for an offense for which a person is
6 subsequently acquitted, whether by the trial court, a court of
7 appeals, or the court of criminal appeals, if the offense for which
8 the person was acquitted arose out of a criminal episode, as defined
9 by Section 3.01, Penal Code, and the person was convicted of or
10 remains subject to prosecution for at least one other offense
11 occurring during the criminal episode.

12 SECTION 2. Article 55.02, Code of Criminal Procedure, is
13 amended by amending Section 1 and adding Section 1a to read as
14 follows:

15 Sec. 1. At the request of the defendant and after notice to
16 the state, the trial court presiding over the case in which the
17 defendant was acquitted, if the trial court is a district court, or
18 a district court in the county in which the trial court is located
19 shall enter an order of expunction for a person entitled to
20 expunction under Article 55.01(a)(1)(A) [~~article 55.01(a)(1)(a)~~]
21 not later than the 30th day after the date of the acquittal. Upon
22 acquittal, the trial court shall advise the defendant of the right
23 to expunction. The defendant shall provide to the district court
24 all of the information required in a petition for expunction under
25 Section 2(b). The attorney for the defendant in the case in which
26 the defendant was acquitted, if the defendant was represented by
27 counsel, or the attorney for the state, if the defendant was not

1 represented by counsel, shall prepare the order for the court's
2 signature.

3 Sec. 1a. (a) The trial court presiding over a case in which
4 a defendant is convicted and subsequently pardoned or otherwise
5 granted relief on the basis of actual innocence of the offense of
6 which the defendant was convicted, if the trial court is a district
7 court, or a district court in the county in which the trial court is
8 located shall enter an order of expunction for a person entitled to
9 expunction under Article 55.01(a)(1)(B) not later than the 30th day
10 after the date the court receives notice of the pardon or other
11 grant of relief. The person shall provide to the district court all
12 of the information required in a petition for expunction under
13 Section 2(b).

14 (b) The attorney for the state shall prepare an expunction
15 order under this section for the court's signature.

16 (c) The court shall include in an expunction order under
17 this section a listing of each official, agency, or other entity of
18 this state or political subdivision of this state and each private
19 entity that there is reason to believe has any record or file that
20 is subject to the order. The court shall also provide in an
21 expunction order under this section that the Department of Public
22 Safety and the Texas Department of Criminal Justice shall:

23 (1) return to the court all records and files that are
24 subject to the expunction order; and

25 (2) delete from its public records all index
26 references to the records and files that are subject to the
27 expunction order.

1 (d) The court shall retain all records and files returned to
2 the court under Subsection (c) until the statute of limitations has
3 run for any civil case or proceeding relating to the wrongful
4 imprisonment of the person subject to the expunction order.

5 SECTION 3. Section 2(a), Article 55.02, Code of Criminal
6 Procedure, is amended to read as follows:

7 (a) A person who is entitled to expunction of records and
8 files under Article 55.01(a)(2) [~~55.01(a)~~] or a person who is
9 eligible for expunction of records and files under Article 55.01(b)
10 may file an ex parte petition for expunction in a district court for
11 the county in which:

12 (1) the petitioner was arrested; or

13 (2) the offense was alleged to have occurred.

14 SECTION 4. Section 3(c), Article 55.02, Code of Criminal
15 Procedure, is amended to read as follows:

16 (c) When the order of expunction is final, the clerk of the
17 court shall send a certified copy of the order to the Crime Records
18 Service of the Department of Public Safety and to each official or
19 agency or other governmental entity of this state or of any
20 political subdivision of this state named in [~~designated by the~~
21 ~~person who is the subject of~~] the order. The certified copy of the
22 order must be sent by secure electronic mail, electronic
23 transmission, or facsimile transmission or otherwise by certified
24 mail, return receipt requested. In sending the order to a
25 governmental entity named in the order [~~designated by the person~~],
26 the clerk may elect to substitute hand delivery for certified mail
27 under this subsection, but the clerk must receive a receipt for that

1 hand-delivered order.

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

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

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

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

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

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

3 (A) another criminal case, including a
4 prosecution, motion to adjudicate or revoke community supervision,
5 parole revocation hearing, mandatory supervision revocation
6 hearing, punishment hearing, or bond hearing; or

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

9 (b) Unless the person who is the subject of the expunction
10 order is again arrested for or charged with an offense arising out
11 of the transaction for which the person was arrested or unless the
12 court provides for the retention of records and files under
13 Subsection (a-2) [~~(a) of this section~~], the provisions of Articles
14 55.03 and 55.04 [~~of this code~~] apply to files and records retained
15 under this section.

16 SECTION 6. Section 5(a), Article 55.02, Code of Criminal
17 Procedure, is amended to read as follows:

18 (a) Except as provided by Subsections (f) and (g), on
19 receipt of the order, each official or agency or other governmental
20 entity named in the order shall:

21 (1) return all records and files that are subject to
22 the expunction order to the court or in cases other than those
23 described by Section 1a, if removal is impracticable, obliterate
24 all portions of the record or file that identify the person who is
25 the subject of the order and notify the court of its action; and

26 (2) delete from its public records all index
27 references to the records and files that are subject to the

1 expunction order.

2 SECTION 7. This Act applies to an expunction of arrest
3 records and files for any criminal offense:

4 (1) that occurred before, on, or after the effective
5 date of this Act; or

6 (2) for which a pardon or other relief on the basis of
7 actual innocence was granted before, on, or after the effective
8 date of this Act.

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

ADOPTED

MAY 25 2011

Atty. Gen.
Secretary of the Senate

By: Rep. Veasey / Sen. West

H.B. No. 351

Substitute the following for ___B. No. _____:

By: Roby Ellis

C.S. A.B. No. 351

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), (a-1), (b), and (c) and adding
7 Subsection (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:

17 (i) pardoned for a reason other than that
18 described by Subparagraph (ii); or

19 (ii) pardoned or otherwise granted relief
20 on the basis of actual innocence with respect to that offense, if
21 the applicable pardon or court order clearly indicates on its face
22 that the pardon or order was granted or rendered on the basis of the
23 person's actual innocence; or

24 (2) the person has been released and the charge, if

1 any, has not resulted in a final conviction and is no longer pending
2 and there was no court-ordered community supervision under Article
3 42.12 for the offense, unless the offense is a Class C misdemeanor,
4 provided that [~~each of the following conditions exist~~]:

5 (A) regardless of whether any statute of
6 limitations exists for the offense and whether any limitations
7 period for the offense has expired, an indictment or information
8 charging the person with the commission of a felony or misdemeanor
9 offense arising out of the transaction for which the person was
10 arrested:

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

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

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

19 (c) at least three years have elapsed
20 from the date of arrest if the arrest was for an offense punishable
21 as a felony; 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

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

4 ~~[(i) the limitations period expired before~~
5 ~~the date on which a petition for expunction was filed under Article~~
6 ~~55.02, or~~

7 ~~[(ii)]~~ the court finds that the indictment
8 or information was dismissed or quashed because the person
9 completed a pretrial intervention program authorized under Section
10 76.011, Government Code, ~~[or]~~ because the presentment had been made
11 because of mistake, false information, or other similar reason
12 indicating absence of probable cause at the time of the dismissal to
13 believe the person committed the offense, or because the indictment
14 or information ~~[it]~~ was void; or

15 (B) prosecution of the person for the offense for
16 which the person was arrested is no longer possible because the
17 limitations period has expired ~~[the person has been released and~~
18 ~~the charge, if any, has not resulted in a final conviction and is no~~
19 ~~longer pending and there was no court ordered community supervision~~
20 ~~under Article 42.12 for any offense other than a Class C~~
21 ~~misdemeanor, and~~

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

24 (a-1) Notwithstanding any other provision of this article,
25 a person may not expunge records and files relating to an arrest
26 that occurs pursuant to a warrant issued under Section 21, Article
27 42.12 ~~[Subsection (a)(2)(C), a person's conviction of a felony in~~

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

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

11 (b) Except as provided by Subsection (c) [~~of this section~~],
12 a district court may expunge all records and files relating to the
13 arrest of a person who has been arrested for commission of a felony
14 or misdemeanor under the procedure established under Article 55.02
15 [~~of this code~~] if:

16 (1) the person is:

17 (A) [~~(1)~~] tried for the offense for which the
18 person was arrested;

19 (B) [~~(2)~~] convicted of the offense; and

20 (C) [~~(3)~~] acquitted by the court of criminal
21 appeals or, if the period for granting a petition for discretionary
22 review has expired, by a court of appeals; or

23 (2) an office of the attorney representing the state
24 authorized by law to prosecute the offense for which the person was
25 arrested recommends the expunction to the appropriate district
26 court before the person is tried for the offense, regardless of
27 whether an indictment or information has been presented against the

1 person in relation to the offense.

2 (c) A court may not order the expunction of records and
3 files relating to an arrest for an offense for which a person is
4 subsequently acquitted, whether by the trial court, a court of
5 appeals, or the court of criminal appeals, if the offense for which
6 the person was acquitted arose out of a criminal episode, as defined
7 by Section 3.01, Penal Code, and the person was convicted of or
8 remains subject to prosecution for at least one other offense
9 occurring during the criminal episode.

10 SECTION 2. Article 55.02, Code of Criminal Procedure, is
11 amended by amending Section 1 and adding Section 1a to read as
12 follows:

13 Sec. 1. At the request of the defendant and after notice to
14 the state, the trial court presiding over the case in which the
15 defendant was acquitted, if the trial court is a district court, or
16 a district court in the county in which the trial court is located
17 shall enter an order of expunction for a person entitled to
18 expunction under Article 55.01(a)(1)(A) [~~article 55.01(a)(1)(a)~~]
19 not later than the 30th day after the date of the acquittal. Upon
20 acquittal, the trial court shall advise the defendant of the right
21 to expunction. The defendant shall provide to the district court
22 all of the information required in a petition for expunction under
23 Section 2(b). The attorney for the defendant in the case in which
24 the defendant was acquitted, if the defendant was represented by
25 counsel, or the attorney for the state, if the defendant was not
26 represented by counsel, shall prepare the order for the court's
27 signature.

1 Sec. 1a. (a) The trial court presiding over a case in which
2 a defendant is convicted and subsequently granted relief or
3 pardoned on the basis of actual innocence of the offense of which
4 the defendant was convicted, if the trial court is a district court,
5 or a district court in the county in which the trial court is
6 located shall enter an order of expunction for a person entitled to
7 expunction under Article 55.01(a)(1)(B)(ii) not later than the 30th
8 day after the date the court receives notice of the pardon or other
9 grant of relief. The person shall provide to the district court all
10 of the information required in a petition for expunction under
11 Section 2(b).

12 (b) The attorney for the state shall:

13 (1) prepare an expunction order under this section for
14 the court's signature; and

15 (2) notify the Texas Department of Criminal Justice if
16 the person is in the custody of the department.

17 (c) The court shall include in an expunction order under
18 this section a listing of each official, agency, or other entity of
19 this state or political subdivision of this state and each private
20 entity that there is reason to believe has any record or file that
21 is subject to the order. The court shall also provide in an
22 expunction order under this section that:

23 (1) the Texas Department of Criminal Justice shall
24 send to the court the documents delivered to the department under
25 Section 8(a), Article 42.09; and

26 (2) the Department of Public Safety and the Texas
27 Department of Criminal Justice shall delete or redact, as

1 appropriate, from their public records all index references to the
2 records and files that are subject to the expunction order.

3 (d) The court shall retain all documents sent to the court
4 under Subsection (c)(1) until the statute of limitations has run
5 for any civil case or proceeding relating to the wrongful
6 imprisonment of the person subject to the expunction order.

7 SECTION 3. Section 2(a), Article 55.02, Code of Criminal
8 Procedure, is amended to read as follows:

9 (a) A person who is entitled to expunction of records and
10 files under Article 55.01(a)(1)(B)(i) or 55.01(a)(2) [~~55.01(a)~~] or
11 a person who is eligible for expunction of records and files under
12 Article 55.01(b) may file an ex parte petition for expunction in a
13 district court for the county in which:

- 14 (1) the petitioner was arrested; or
15 (2) the offense was alleged to have occurred.

16 SECTION 4. Section 3(c), Article 55.02, Code of Criminal
17 Procedure, is amended to read as follows:

18 (c) When the order of expunction is final, the clerk of the
19 court shall send a certified copy of the order to the Crime Records
20 Service of the Department of Public Safety and to each official or
21 agency or other governmental entity of this state or of any
22 political subdivision of this state named in [~~designated by the~~
23 ~~person who is the subject of~~] the order. The certified copy of the
24 order must be sent by secure electronic mail, electronic
25 transmission, or facsimile transmission or otherwise by certified
26 mail, return receipt requested. In sending the order to a
27 governmental entity named in the order [~~designated by the person~~],

1 the clerk may elect to substitute hand delivery for certified mail
2 under this subsection, but the clerk must receive a receipt for that
3 hand-delivered order.

4 SECTION 5. 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 6. Section 5(a), Article 55.02, Code of Criminal
19 Procedure, is amended to read as follows:

20 (a) Except as provided by Subsections (f) and (g), on
21 receipt of the order, each official or agency or other governmental
22 entity named in the order shall:

23 (1) return all records and files that are subject to
24 the expunction order to the court or in cases other than those
25 described by Section 1a, if removal is impracticable, obliterate
26 all portions of the record or file that identify the person who is
27 the subject of the order and notify the court of its action; and

1 (2) delete from its public records all index
2 references to the records and files that are subject to the
3 expunction order.

4 SECTION 7. This Act applies to an expunction of arrest
5 records and files for any criminal offense:

6 (1) that occurred before, on, or after the effective
7 date of this Act; or

8 (2) for which a pardon or other relief on the basis of
9 actual innocence was granted before, on, or after the effective
10 date of this Act.

11 SECTION 8. This Act takes effect September 1, 2011.

ADOPTED

MAY 25 2011

FLOOR AMENDMENT NO. 1

Antony Spaul
Secretary of the Senate

BY: Roger W. N.

1 Amend C.S.H.B. No. 351 (senate committee report) in SECTION
2 1 of the bill as follows:

3 (1) In amended Article 55.01(a)(2)(A), Code of Criminal
4 Procedure (page 1, lines 40 and 41), strike "felony or
5 misdemeanor offense arising out of the" and substitute
6 "misdemeanor offense based on the person's arrest or charging
7 the person with the commission of any felony offense arising out
8 of the same".

9 (2) Strike added Articles 55.01(a)(2)(A)(i)(a)-(c), Code
10 of Criminal Procedure (page 1, lines 45-53), and substitute the
11 following:

12 (a) at least 180 days have elapsed
13 from the date of arrest if the arrest for which the expunction
14 was sought was for an offense punishable as a Class C
15 misdemeanor and if there was no felony charge arising out of the
16 same transaction for which the person was arrested;

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

22 (c) at least three years have elapsed
23 from the date of arrest if the arrest for which the expunction
24 was sought was for an offense punishable as a felony or if there
25 was a felony charge arising out of the same transaction for
26 which the person was arrested; or

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 26, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB351 by Veasey (Relating to the expunction of records and files relating to a person's arrest.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure by expanding the types of circumstances by which a person is eligible for an expunction of records and files relating to an arrest. The bill would allow for the expunction of records for persons convicted and subsequently granted relief on the basis of actual innocence which would result in an increase in expunctions by an estimated twelve (12), or less, cases per year. The bill would allow a person to expunge records if he/she was not charged via an indictment or information has been dismissed following the arrest and a specified amount of time has elapsed from the date of arrest depending on the offense, and if the attorney representing the state determines that the arrest records and files are not needed for other criminal investigations.

However, if the state were to determine that the person who is the subject of an expunction order is still subject to conviction, the bill would provide for the court to allow applicable law enforcement agencies and the prosecuting attorney to retain arrest records (for a certain amount of time) of said person even after expunction.

Currently, persons seeking expunctions must wait until the statute of limitations expires. The provisions in this bill could cause an increase in the number of expunctions filed for new arrests and those arrests which are currently waiting for the statute of limitations to expire. The prosecutor can agree to the expunction without considering the statute of limitations or lack of probable cause.

A person who knowingly absconds after being released following an arrest would be ineligible for an expunction of records and files relating to that arrest per the provisions of the bill.

The Office of Court Administration and the Texas Department of Criminal Justice anticipate no significant fiscal impact from the bill. This analysis assumes that the Department of Public Safety could implement the provisions of the bill within existing resources. The Board of Pardons and Paroles anticipates a fiscal impact, but cannot determine whether the fiscal impact would be significant as the number of persons affected cannot be determined.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 696 Department of Criminal Justice, 697 Board of Pardons and Paroles

LBB Staff: JOB, YD, ESi, GG, TB, AI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 23, 2011

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB351 by Veasey (Relating to the expunction of records and files relating to a person's arrest.), **Committee Report 2nd House, Substituted**

<p>No significant fiscal implication to the State is anticipated.</p>
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The bill would amend the Code of Criminal Procedure by expanding the types of circumstances by which a person is eligible for an expunction of records and files relating to an arrest. The bill would allow for the expunction of records for persons convicted and subsequently granted relief on the basis of actual innocence which would result in an increase in expunctions by an estimated twelve (12), or less, cases per year. The bill would allow a person to expunge records if he/she was not charged via an indictment or information has been dismissed following the arrest and a specified amount of time has elapsed from the date of arrest depending on the offense, and if the attorney representing the state determines that the arrest records and files are not needed for other criminal investigations.

However, if the state were to determine that the person who is the subject of an expunction order is still subject to conviction, the bill would provide for the court to allow applicable law enforcement agencies and the prosecuting attorney to retain arrest records (for a certain amount of time) of said person even after expunction.

Currently, persons seeking expunctions must wait until the statute of limitations expires. The provisions in this bill could cause an increase in the number of expunctions filed for new arrests and those arrests which are currently waiting for the statute of limitations to expire. The prosecutor can agree to the expunction without considering the statute of limitations or lack of probable cause.

A person who knowingly absconds after being released following an arrest would be ineligible for an expunction of records and files relating to that arrest per the provisions of the bill.

The Office of Court Administration and the Texas Department of Criminal Justice anticipate no significant fiscal impact from the bill. This analysis assumes that the Department of Public Safety could implement the provisions of the bill within existing resources. The Board of Pardons and Paroles anticipates a fiscal impact, but cannot determine whether the fiscal impact would be significant as the number of persons affected cannot be determined.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 696 Department of Criminal Justice, 697 Board of Pardons and Paroles

LBB Staff: JOB, YD, ESi, GG, TB, AI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 17, 2011

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB351 by Veasey (Relating to the expunction of records and files relating to a person's arrest.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure by expanding the types of circumstances by which a person is eligible for an expunction of records and files relating to an arrest. The bill would allow for the expunction of records for persons convicted and subsequently granted relief on the basis of actual innocence which would result in an increase in expunctions by an estimated twelve (12), or less, cases per year. The bill would allow a person to expunge records if he/she was not charged via an indictment or information has been dismissed following the arrest and a specified amount of time has elapsed from the date of arrest depending on the offense, and if the attorney representing the state determines that the arrest records and files are not needed for other criminal investigations.

However, if the state were to determine that the person who is the subject of an expunction order is still subject to conviction, the bill would provide for the court to allow applicable law enforcement agencies and the prosecuting attorney to retain arrest records (for a certain amount of time) of said person even after expunction.

Currently, the persons seeking expunctions must wait until the statute of limitations expires. The provisions in this bill could cause an increase in the number of expunctions filed for new arrests and those arrests which are currently waiting for the statute of limitations to expire. The prosecutor can agree to the expunction without considering the statute of limitations or lack of probable cause.

A person who knowingly absconds after being released following an arrest would be ineligible for an expunction of records and files relating to that arrest per the provisions of the bill.

The Office of Court Administration and the Texas Department of Criminal Justice anticipate no significant fiscal impact from the bill. This analysis assumes that the Department of Public Safety could implement the provisions of the bill within existing resources. The Board of Pardons and Paroles anticipates an impact, but cannot determine whether it would be significant as the number of persons affected cannot be determined.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 696 Department of Criminal Justice, 697 Board of Pardons and Paroles

LBB Staff: JOB, ESi, YD, GG, TB, AI

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 18, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB351 by Veasey (Relating to the expunction of records and files relating to a person's arrest.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure by expanding the types of circumstances by which a person is eligible for an expunction of records and files relating to an arrest. The bill would allow for the expunction of records for persons convicted and subsequently granted relief on the basis of actual innocence which would result in an increase in expunctions by an estimated twelve (12), or less, cases per year. The bill would allow a person to expunge records if he/she was not charged via an indictment or information has been dismissed following the arrest, and if the attorney representing the state determines that the arrest records and files are not needed for other criminal investigations.

Currently, the persons seeking expunctions must wait until the statute of limitations expires. The provisions in this bill could cause an increase in the number of expunctions filed for new arrests and those arrests which are currently waiting for the statute of limitations to expire. The prosecutor can agree to the expunction without considering the statute of limitations or lack of probable cause.

The Office of Court Administration and the Texas Department of Criminal Justice anticipate no significant fiscal impact from the bill. This analysis assumes that the Department of Public Safety could implement the provisions of the bill within existing resources. The Board of Pardons and Paroles anticipates an impact, but cannot determine whether it would be significant as the number of persons affected cannot be determined.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 696 Department of Criminal Justice, 697 Board of Pardons and Paroles

LBB Staff: JOB, ESi, GG, YD, TB, AI

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

March 21, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB351 by Veasey (Relating to the expunction of records and files relating to a person's arrest.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure by allowing for the expunction of records and files relating to the arrest of an individual. The bill would allow for the expunction of records for persons convicted and subsequently granted relief on the basis of actual innocence which would result in an increase in expunctions by an estimated twelve (12), or less, cases per year. The bill would allow a person to expunge records if he/she was not charged via an indictment or information has been dismissed in the 180 days following the arrest. Currently, the person must wait until the statute of limitations expires. This should cause an increase in the number of expunctions filed for new arrests and those arrests which are currently waiting for the statute of limitations to expire. In addition, the bill repeals Article 55.01 (a-1) which requires that a person not be convicted of a felony in the five years preceding the date of arrest to be eligible for expunction and allows for the expunction of records for arrests without a statute of limitations, such as murder, sexual assault and indecency with a child, which were previously barred. The bill would allow a person to expunge records if the prosecutor recommends the expunction before the person is tried for the offense. The prosecutor can agree to the expunction without considering the statute of limitations, lack of probable cause or the above mentioned 180 day "waiting period". The bill would allow most unadjudicated arrests to be expunged, except those that arose out of the same criminal episode of a previous conviction.

The Office of Court Administration and the Texas Department of Criminal Justice anticipate no significant fiscal impact from the bill. It is assumed that the Department of Public Safety could implement the provisions of the bill with existing resources.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, YD, TB, AI

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

May 23, 2011

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB351 by Veasey (Relating to the expunction of records and files relating to a person's arrest.), **Committee Report 2nd House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, ADM, LM, GG

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

May 17, 2011

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB351 by Veasey (Relating to the expunction of records and files relating to a person's arrest.), As Engrossed

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, LM, GG

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

April 18, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB351 by Veasey (Relating to the expunction of records and files relating to a person's arrest.), **Committee Report 1st House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, LM, GG

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

CRIMINAL JUSTICE IMPACT STATEMENT

82ND LEGISLATIVE REGULAR SESSION

March 21, 2011

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB351 by Veasey (Relating to the expunction of records and files relating to a person's arrest.), **As Introduced**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, GG, LM