

By: Collier

H.B. No. 3818

A BILL TO BE ENTITLED

AN ACT

relating to the automatic expunction of criminal records; repealing certain fees.

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

SECTION 1. Article 55.011(b), Code of Criminal Procedure, is amended to read as follows:

(b) A close relative of a deceased person who, if not deceased, would be entitled to expunction of records and files under Article 55.01 may file on behalf of the deceased person an ex parte petition for expunction under Section ~~[2-or]~~ 2a, Article 55.02. If the court finds that the deceased person would be entitled to expunction of any record or file that is the subject of the petition, the court shall enter an order directing expunction.

SECTION 2. Section 1, Article 55.02, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. (a) The ~~[At the request of the defendant and after notice to the state, the]~~ trial court ~~[presiding over the case in which the defendant was acquitted, if the trial court is a district court, or a district court in the county in which the trial court is located]~~ shall enter an order of expunction for a person entitled to expunction because:

(1) the person was acquitted as described by Article 55.01(a)(1)(A);

(2) the person was pardoned as described by Article

1 55.01(a)(1)(B); or

2 (3) the offense was dismissed as described by Article
3 55.01(a)(2)(A)(ii) [~~under Article 55.01(a)(1)(A) not later than~~
4 ~~the 30th day after the date of the acquittal. Upon acquittal, the~~
5 ~~trial court shall advise the defendant of the right to expunction.~~
6 ~~The defendant shall provide to the district court all of the~~
7 ~~information required in a petition for expunction under Section~~
8 ~~2(b). The attorney for the defendant in the case in which the~~
9 ~~defendant was acquitted, if the defendant was represented by~~
10 ~~counsel, or the attorney for the state, if the defendant was not~~
11 ~~represented by counsel, shall prepare the order for the court's~~
12 ~~signature].~~

13 (b) The attorney representing the state whose office would
14 have prosecuted the offense shall bring a motion for expunction for
15 an arrested person described by Article 55.01(a)(2)(A)(i) or (B).

16 (c) The court shall enter an order of expunction under this
17 section not later than the 30th day after the date of acquittal,
18 pardon, dismissal, or filing of the motion by the attorney
19 representing the state. The court shall include in the order a
20 listing of each official, agency, or other entity of this state or
21 political subdivision of this state and each private entity that
22 there is reason to believe has any record or file that is subject to
23 the order.

24 SECTION 3. Section 2a, Article 55.02, Code of Criminal
25 Procedure, is amended by adding Subsection (e) to read as follows:

26 (e) The director of the Department of Public Safety or the
27 director's authorized representative may file on behalf of a person

1 under this section the application described by Subsection (a).
2 The application must be verified and must include all of the
3 information otherwise required of an application under this
4 section, including the information described by Subsections (c)(1)
5 and (3). The director of the Department of Public Safety or the
6 director's authorized representative shall forward a copy of the
7 application to the district court for the county in which the person
8 resides and shall request the court to enter an order directing
9 expunction based on an entitlement to expunction under Article
10 55.01(d). On receipt of a request under this subsection, the court
11 shall, without holding a hearing on the matter, enter a final order
12 directing expunction.

13 SECTION 4. Sections 3(a) and (d), Article 55.02, Code of
14 Criminal Procedure, are amended to read as follows:

15 (a) In an order of expunction issued under this article, the
16 court shall require any state agency that sent information
17 concerning the arrest to a central federal depository to request
18 the depository to return all records and files subject to the order
19 of expunction. A [The] person who is the subject of an [the]
20 expunction order under Section 2a, or an agency protesting the
21 expunction, may appeal the court's decision in the same manner as in
22 other civil cases.

23 (d) Any returned receipts received by the clerk from
24 ~~[notices of the hearing and]~~ copies of the order shall be maintained
25 in the file on the proceedings under this chapter.

26 SECTION 5. Sections 5(a) and (c), Article 55.02, Code of
27 Criminal Procedure, are amended to read as follows:

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

4 (1) return all records and files that are subject to
5 the expunction order to the court or [~~in cases other than those~~
6 ~~described by Section 1a~~], if removal is impracticable, obliterate
7 all portions of the record or file that identify the person who is
8 the subject of the order and notify the court of its action; and

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

12 (c) Except in the case of a person who is the subject of an
13 expunction order based on an entitlement under Article 55.01(d) and
14 except as provided by Subsection (g), if an order of expunction is
15 issued under this article, the court records concerning expunction
16 proceedings are not open for inspection by anyone except the person
17 who is the subject of the order unless the order permits retention
18 of a record under Section 4(a) [~~4 of this article~~] and the person is
19 again arrested for or charged with an offense arising out of the
20 transaction for which the person was arrested or unless the court
21 provides for the retention of records and files under Section
22 4(a-2) [~~4(a) of this article~~]. The clerk of the court issuing the
23 order shall obliterate all public references to the proceeding and
24 maintain the files or other records in an area not open to
25 inspection.

26 SECTION 6. Section 411.151(b), Government Code, is amended
27 to read as follows:

1 (b) If a [~~A person may petition for the expunction of a DNA~~
2 ~~record under the procedures established under Article 55.02, Code~~
3 ~~of Criminal Procedure, if the]~~ person is entitled under Article
4 55.01, Code of Criminal Procedure, to the expunction of records
5 relating to the offense to which a a [~~the]~~ DNA record is related, the
6 trial court shall enter an order of expunction of the DNA record
7 under Section 1(a), Article 55.02 [~~under Article 55.01~~], Code of
8 Criminal Procedure, or the attorney representing the state whose
9 office would have prosecuted the offense shall bring a motion for
10 expunction of the DNA record under Section 1(b) of that article, as
11 applicable.

12 SECTION 7. The following provisions of the Code of Criminal
13 Procedure are repealed:

- 14 (1) Sections 1a and 2, Article 55.02;
15 (2) Article 55.05; and
16 (3) Article 102.006.

17 SECTION 8. (a) This Act applies only to the expunction of
18 arrest records related to:

- 19 (1) a criminal offense for which an acquittal occurred
20 on or after the effective date of this Act;
21 (2) a charge for an offense that was dismissed on or
22 after the effective date of this Act; or
23 (3) an arrest made on or after the effective date of
24 this Act.

25 (b) Expunction for an acquittal, dismissal, or arrest that
26 occurred before the effective date of this Act is governed by the
27 law in effect at that time, and the former law is continued in

1 effect for that purpose.

2 SECTION 9. This Act takes effect September 1, 2013.