

By: Reynolds

H.B. No. 1655

A BILL TO BE ENTITLED

AN ACT

relating to the expunction of certain files and records arising from a criminal investigation; creating a criminal offense.

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

SECTION 1. Chapter 1, Code of Criminal Procedure, is amended by adding Articles 1.28 and 1.281 to read as follows:

Art. 1.28. RECORDS OF CERTAIN PERSONS NOT CHARGED WITH AN OFFENSE. (a) A person who is accused or suspected of committing a felony offense but is not placed under a custodial or noncustodial arrest for the offense is entitled to have all records and files relating to a grand jury investigation into the person's conduct expunged in the manner provided by Article 55.01 if:

(1) the person was not indicted for any alleged offense by the grand jury; and

(2) the statute of limitations has expired for any offense investigated by the grand jury.

(b) A person who is entitled to expunction of records and files under Subsection (a) may file an ex parte petition in a district court for the county in which the grand jury investigation occurred.

(c) The petition must be verified and must include the following or an explanation for why one or more of the following is not included:

(1) the petitioner's:

1 (A) full name;
2 (B) sex;
3 (C) race;
4 (D) date of birth;
5 (E) driver's license number;
6 (F) social security number; and
7 (G) address at the time of the grand jury
8 investigation;

9 (2) the alleged offense or conduct for which the
10 petitioner was investigated;

11 (3) the date the alleged offense or conduct for which
12 the petitioner was investigated was alleged to have been committed;

13 (4) the term of the grand jury that investigated the
14 petitioner; and

15 (5) together with the applicable physical or e-mail
16 addresses, a list of all:

17 (A) law enforcement agencies, detention
18 facilities, magistrates, courts, prosecuting attorneys, central
19 state depositories of criminal records, and other officials or
20 agencies or other entities of this state or of any political
21 subdivision of this state that the petitioner has reason to believe
22 have records or files that are subject to expunction;

23 (B) central federal depositories of criminal
24 records that the petitioner has reason to believe have records or
25 files that are subject to expunction; and

26 (C) private entities that compile and
27 disseminate for compensation criminal history record information

1 that the petitioner has reason to believe have information related
2 to records or files that are subject to expunction.

3 (d) The court shall set a hearing on the matter not earlier
4 than the 30th day after the filing of the petition and shall give to
5 each official or agency or other governmental entity named in the
6 petition reasonable notice of the hearing by:

7 (1) certified mail, return receipt requested; or

8 (2) secure e-mail, electronic transmission, or
9 facsimile transmission.

10 (e) If the court finds that the petitioner is entitled to
11 expunction of any records or files that are the subject of the
12 petition, it shall enter an order directing expunction.

13 (f) On receipt of an order under this article, each official
14 or agency or other governmental entity named in the order shall:

15 (1) return all records and files that are subject to
16 the expunction order to the court, or if removal is impracticable,
17 obliterate all portions of the record or file that identify the
18 person who is the subject of the order and notify the court of its
19 action; and

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

23 (g) If an order of expunction is entered under this article,
24 the court records concerning expunction proceedings are not open
25 for inspection by anyone except the person who is the subject of the
26 order.

27 (h) The clerk of the court shall destroy all the files or

1 other records received under Subsection (f) not earlier than the
2 60th day after the date the order of expunction is issued or later
3 than the first anniversary of that date.

4 (i) Not later than the 30th day before the date on which the
5 clerk destroys the files or other records under Subsection (h), the
6 clerk shall provide notice by mail, e-mail, or facsimile
7 transmission to the attorney representing the state in the
8 expunction proceeding. If the attorney representing the state in
9 the expunction proceeding objects to the destruction not later than
10 the 20th day after receiving notice under this subsection, the
11 clerk may not destroy the files or other records until the first
12 anniversary of the date the order of expunction is issued or the
13 first business day after that date.

14 (j) Article 55.03 applies to an expunction under this
15 article.

16 Art. 1.281. VIOLATION OF CERTAIN EXPUNCTION ORDERS.

17 Sec. 1. A person who acquires knowledge of a grand jury
18 investigation while an officer or employee of the state or of any
19 agency or other entity of the state or any political subdivision of
20 the state and who knows of an order under Article 1.28 expunging the
21 records and files relating to that investigation commits an offense
22 if he knowingly releases, disseminates, or otherwise uses the
23 records or files.

24 Sec. 2. A person who knowingly fails to return or to
25 obliterate identifying portions of a record or file ordered
26 expunged under Article 1.28 commits an offense.

27 Sec. 3. An offense under this article is a Class B

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1 misdemeanor.

2 SECTION 2. This Act takes effect September 1, 2015.