

By: Collier

H.B. No. 3362

A BILL TO BE ENTITLED

AN ACT

relating to the automatic expunction of arrest records and files for certain veterans who successfully complete a veterans court pretrial intervention program.

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

SECTION 1. Article 55.01(a), Code of Criminal Procedure, is amended to read as follows:

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

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

(A) acquitted by the trial court, except as provided by Subsection (c); or

(B) convicted and subsequently:

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

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

(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:

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 misdemeanor offense
9 based on the person's arrest or charging the person with the
10 commission of any felony offense arising out of the same
11 transaction for which the person was arrested:

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

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

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

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

1 person was arrested; or

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

6 (ii) if presented at any time following the
7 arrest, was dismissed or quashed, and the court finds that the
8 indictment or information was dismissed or quashed because:

9 (a) the person completed a veterans
10 court program created under Chapter 124, Government Code, or former
11 law;

12 (b) the person completed a pretrial
13 intervention program authorized under Section 76.011, Government
14 Code, other than a veterans court program created under Chapter
15 124, Government Code, or former law;

16 (c) [because] the presentment had
17 been made because of mistake, false information, or other similar
18 reason indicating absence of probable cause at the time of the
19 dismissal to believe the person committed the offense; or

20 (d) [, or because] the indictment or
21 information was void; or

22 (B) prosecution of the person for the offense for
23 which the person was arrested is no longer possible because the
24 limitations period has expired.

25 SECTION 2. Section 1a, Article 55.02, Code of Criminal
26 Procedure, is amended by adding Subsection (a-1) to read as
27 follows:

1 (a-1) A trial court dismissing a case following a person's
2 successful completion of a veterans court program created under
3 Chapter 124, Government Code, or former law, if the trial court is a
4 district court, or a district court in the county in which the trial
5 court is located shall enter an order of expunction for a person
6 entitled to expunction under Article 55.01(a)(2)(A)(ii)(a) not
7 later than the 30th day after the date the court dismisses the case
8 or receives the information regarding that dismissal, as
9 applicable.

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

12 (a) A person who is entitled to expunction of records and
13 files under Article 55.01(a)(1)(B)(i) or under Article
14 55.01(a)(2), other than Article 55.01(a)(2)(A)(ii)(a), or a person
15 who is eligible for expunction of records and files under Article
16 55.01(b) may file an ex parte petition for expunction in a district
17 court for the county in which:

18 (1) the petitioner was arrested; or

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

20 SECTION 4. Section 124.001(b), Government Code, is amended
21 to read as follows:

22 (b) If a defendant successfully completes a veterans court
23 program [~~as authorized under Section 76.011~~], after notice to the
24 attorney representing the state and a hearing in the veterans court
25 at which that court determines that a dismissal is in the best
26 interest of justice, the veterans court shall provide to the court
27 in which the criminal case is pending information about the

1 dismissal and shall include all of the information required about
2 the defendant for a petition for expunction under Section 2(b),
3 Article 55.02, Code of Criminal Procedure. The court in which the
4 criminal case is pending shall dismiss the criminal action against
5 the defendant and:

6 (1) if that trial court is a district court, the court
7 shall enter an order of expunction on behalf of the defendant under
8 Section 1a(a-1), Article 55.02, Code of Criminal Procedure; or

9 (2) if that trial court is not a district court, the
10 court shall forward the appropriate dismissal and expunction
11 information to a district court with jurisdiction to enter an order
12 of expunction on behalf of the defendant under Section 1a(a-1),
13 Article 55.02, Code of Criminal Procedure.

14 SECTION 5. (a) This Act applies to the expunction of arrest
15 records and files for a person who successfully completes a
16 veterans court program under Chapter 124, Government Code, or
17 former law, before, on, or after the effective date of this Act,
18 regardless of when the underlying arrest occurred.

19 (b) For a person who is entitled to expunction under Article
20 55.01(a)(2)(A)(ii)(a), Code of Criminal Procedure, as amended by
21 this Act, based on a successful completion of a veterans court
22 program under Chapter 124, Government Code, or former law, before
23 the effective date of this Act, notwithstanding the 30-day time
24 limit provided for the court to enter an automatic order of
25 expunction under Section 1a(a-1), Article 55.02, Code of Criminal
26 Procedure, as added by this Act, the court shall enter an order of
27 expunction for the person as soon as practicable after the court

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1 receives written notice from any party to the case about the
2 person's entitlement to the expunction.

3 SECTION 6. This Act takes effect September 1, 2015.