

By: Alonzo

H.B. No. 3579

A BILL TO BE ENTITLED

AN ACT

relating to the expunction of records and files relating to an offense for which a person is arrested.

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

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

Art. 55.01. RIGHT TO EXPUNCTION. (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 offense for which the person was arrested ~~[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, for the offense for which the expunction is sought has been
2 dismissed or has not resulted in a final conviction for that
3 offense, the charge ~~[and]~~ is no longer pending, and there was no
4 court-ordered community supervision under Article 42.12 for that
5 ~~[the]~~ offense~~[7]~~ unless the offense is a Class C misdemeanor,
6 provided that:

7 (A) regardless of whether any statute of
8 limitations exists for the offense and whether any limitations
9 period for the offense has expired, an indictment or information
10 charging the person with the commission of the ~~[a misdemeanor]~~
11 offense ~~[based on the person's arrest or charging the person with~~
12 ~~the commission of any felony offense arising out of the same~~
13 ~~transaction for which the person was arrested]~~:

14 (i) has not been presented against the
15 person at any time following the person's arrest, and:

16 (a) at least 30 ~~[180]~~ days have
17 elapsed from the date of arrest if the offense ~~[arrest]~~ for which
18 the expunction was sought was ~~[for an offense]~~ punishable as a Class
19 C misdemeanor and if there was no felony charge arising out of the
20 same transaction for which the person was arrested;

21 (b) at least 90 days have ~~[one year~~
22 ~~has]~~ elapsed from the date of arrest if the offense ~~[arrest]~~ for
23 which the expunction was sought was ~~[for an offense]~~ punishable as a
24 Class B or A misdemeanor and if there was no felony charge arising
25 out of the same transaction for which the person was arrested;

26 (c) at least three years have elapsed
27 from the date of arrest if the offense ~~[arrest]~~ for which the

1 expunction was sought was ~~[for an offense]~~ punishable as a felony or
2 if there was a felony charge arising out of the same transaction for
3 which the person was arrested; or

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

8 (ii) if presented at any time following the
9 person's arrest, was dismissed or quashed, and the court finds that
10 the indictment or information was dismissed or quashed because the
11 person completed a pretrial intervention program authorized under
12 Section 76.011, Government Code, because the presentment had been
13 made 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 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.

20 (a-1) Notwithstanding any other provision of this article,
21 a person may not expunge offense records and files if the applicable
22 ~~[relating to an]~~ arrest occurred ~~[that occurs]~~ pursuant to a
23 warrant issued under Section 21, Article 42.12.

24 (a-2) Notwithstanding any other provision of this article,
25 a person who intentionally or knowingly absconds from the
26 jurisdiction after being released under Chapter 17 following an
27 arrest is not eligible under Subsection (a)(2)(A)(i)(a), (b), or

(c) or Subsection (a)(2)(B) for an expunction of the records and files relating to that arrest and to the proceedings conducted under Chapter 17.

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

(1) the person is:

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

(B) convicted of the offense; and

(C) acquitted by the court of criminal appeals or, if the period for granting a petition for discretionary review has expired, by a court of appeals; or

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

(c) A court may not order the expunction of records and files relating to ~~[an arrest for]~~ an offense for which a person is subsequently acquitted, whether by the trial court, a court of appeals, or the court of criminal appeals, if the offense for which the person was acquitted arose out of a criminal episode, as defined by Section 3.01, Penal Code, and the person was convicted of or

1 remains subject to prosecution for at least one other offense
2 occurring during the criminal episode.

3 (d) A person is entitled to have expunged any information
4 that identifies the person, including the person's name, address,
5 date of birth, driver's license number, and social security number,
6 contained in records and files relating to another person's [the]
7 arrest or to any ensuing criminal proceedings based on that arrest
8 [of another person expunged] if:

9 (1) the information identifying the person asserting
10 the entitlement to expunction was falsely given by the person
11 arrested as the arrested person's identifying information without
12 the consent of the person asserting the entitlement; and

13 (2) the only reason for the information identifying
14 the person asserting the entitlement being contained in the
15 [arrest] offense records and files of the person arrested is that
16 the information was falsely given by the person arrested as the
17 arrested person's identifying information.

18 SECTION 2. Section 2a(b), Article 55.02, Code of Criminal
19 Procedure, is amended to read as follows:

20 (b) The application must be verified, include authenticated
21 fingerprint records of the applicant, and include the following or
22 an explanation for why one or more of the following is not included:

23 (1) the applicant's full name, sex, race, date of
24 birth, driver's license number, social security number, and address
25 at the time the person who falsely identified himself or herself as
26 the applicant was arrested;

27 (2) the following information regarding the arrest:

(A) the date of arrest;

(B) the offense charged against the person arrested;

(C) the name of the county or municipality in which the arrest occurred; and

(D) the name of the arresting agency; and

(3) a statement that:

(A) the applicant is not the person arrested and for whom the applicable [~~arrest~~] records and files were created; and

(B) the applicant did not give the person arrested consent to falsely identify himself or herself as the applicant.

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

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

SECTION 4. Section 4(a-1), Article 55.02, Code of Criminal Procedure, is amended to read as follows:

(a-1) The court shall provide in its expunction order that the applicable law enforcement agency and prosecuting attorney may retain the offense [~~arrest~~] records and files of any person who

1 becomes entitled to an expunction of those records and files based
2 on the expiration of a period described by Article
3 55.01(a)(2)(A)(i)(a), (b), or (c), but without the certification of
4 the prosecuting attorney as described by Article
5 55.01(a)(2)(A)(i)(d).

6 SECTION 5. Article 55.03, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 55.03. EFFECT OF EXPUNCTION. When the order of
9 expunction is final:

10 (1) the release, maintenance, dissemination, or use of
11 the expunged records and files for any purpose is prohibited;

12 (2) except as provided in Subdivision (3) ~~[of this~~
13 ~~article]~~, the person arrested may deny:

14 (A) the occurrence of the arrest and any ensuing
15 criminal proceedings based on the arrest; and

16 (B) the existence of the expunction order; and

17 (3) the person arrested or any other person, when
18 questioned under oath in a criminal proceeding about an offense
19 ~~[arrest]~~ for which the records have been expunged, may state only
20 that the matter in question has been expunged.

21 SECTION 6. Section 1, Article 55.04, Code of Criminal
22 Procedure, is amended to read as follows:

23 Sec. 1. A person who, ~~[acquires knowledge of an arrest]~~
24 while an officer or employee of the state or of any agency or other
25 entity of the state or any political subdivision of the state,
26 acquires knowledge of an arrest or of criminal proceedings based on
27 that arrest and who knows of an order expunging the records and

1 files relating to the applicable offense [~~that arrest~~] commits an
2 offense if he knowingly releases, disseminates, or otherwise uses
3 the records or files.

4 SECTION 7. This Act applies to an expunction of records and
5 files relating to any criminal offense that occurred before, on, or
6 after the effective date of this Act.

7 SECTION 8. This Act takes effect September 1, 2015.