

By: West

S.B. No. 1644

A BILL TO BE ENTITLED

AN ACT

relating to the right to expunction.

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 OF 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 charge ~~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 any, has not resulted in a final conviction and is no longer pending and there was no court-ordered community supervision under Article

1 42.12 for the offense, unless the offense is a Class C misdemeanor,
2 provided that:

3 (A) regardless of whether any statute of
4 limitations exists for the offense and whether any limitations
5 period for the offense has expired, an indictment or information
6 charging the person with the commission of a misdemeanor offense
7 based on the person's arrest or charging the person with the
8 commission of any felony offense arising out of the same
9 transaction for which the person was 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~~
13 ~~elapsed from the date of arrest if the arrest for which the~~
14 ~~expunction 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 (a)(b) at least 180 days ~~one year~~
18 has elapsed from the date of arrest if the arrest for which the
19 expunction was sought was for an offense punishable as a Class B or
20 A misdemeanor and if there was no felony charge arising out of the
21 same transaction for which the person was arrested;

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

27 (c)(d) the attorney representing

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

5 (ii) if presented at any time following the
6 arrest, was dismissed or quashed, and the court finds that the
7 indictment or information was dismissed or quashed (1) because the
8 person completed a pretrial intervention program authorized under
9 Section 76.011, Government Code, (2) because the presentment had
10 been made because of mistake, false information, or other similar
11 reason indicating absence of probable cause at the time of the
12 dismissal to believe the person committed the offense, (3) ~~or~~
13 because the indictment or information was void; (4) because the
14 person's Class C charge was dismissed pursuant to a plea bargain
15 agreement, in the interest of justice or other similar reason
16 indicating absence of probable cause or the person completed a
17 deferred disposition under Chapter 45 of this Code; or (5) because
18 the person completed a speciality court program authorized by
19 Subtitle K of the Government Code. ~~or~~

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

23 (a-1) Notwithstanding any other provision of this article,
24 a person may not expunge records and files relating to an arrest
25 that occurs pursuant to a warrant issued under Section 21, Article
26 42.12. If the arrest involves additional charges, a person may
27 expunge records and files relating to the additional charges if

1 they otherwise meet the eligibility requirements of this article.

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

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

- 12 (1) the person is:
- 13 (A) tried for the offense for which the person
 - 14 was arrested;
 - 15 (B) convicted of the offense; and
 - 16 (C) acquitted by the court of criminal appeals
- 17 or, if the period for granting a petition for discretionary review
18 has expired, by a court of appeals; or

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

25 (c) A court may not order the expunction of records and
26 files relating to an arrest for an offense for which a person is
27 subsequently acquitted, whether by the trial court, a court of

1 appeals, or the court of criminal appeals, if the offense for which
2 the person was acquitted arose out of a criminal episode, as defined
3 by Section 3.01, Penal Code, and the person was convicted of or
4 remains subject to prosecution for at least one other offense
5 occurring during the criminal episode.

6 (d) A person is entitled to have any information that
7 identifies the person, including the person's name, address, date
8 of birth, driver's license number, and social security number,
9 contained in records and files relating to the arrest of another
10 person expunged if:

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

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

20 (e) No prosecuting attorney may require as a condition for
21 any action in a criminal case that a person waive any rights under
22 this chapter.

23 SECTION 2. This Act takes effect January 1, 2016.