

By: Whitmire

S.B. No. 1874

A BILL TO BE ENTITLED

AN ACT

relating to accessing criminal history record information and other records of involvement in the criminal justice system; authorizing fees; authorizing a civil penalty; creating criminal offenses.

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

SECTION 1. (a) This Act may be cited as the Modern Electronic Records in Texas Act or the MERIT Act.

(b) The legislature finds that:

(1) Texas has an extensive program for sharing information concerning criminal activity among thousands of agencies;

(2) some criminal history record information is confidential and unavailable to the public;

(3) public access to records that identify a person's involvement in criminal activity is vital to public safety, but some privacy is also vital to public safety;

(4) criminal records effectively punish people by limiting opportunities for employment, housing, education, credit, and other essential items;

(5) recidivism is more likely, and rehabilitation less likely, when criminal history record information is published; and

(6) the state, and not private data miners, must determine what punishment or publication is appropriate.

Consequently this chapter states the legislature's judgment as to

what degree of privacy will best promote public safety in the digital age.

(c) This Act is intended to:

(1) define what criminal history record information may be accessed by agencies and the public;

(2) remove financial incentive for data miners to publish nonconviction records on the Internet; and

(3) establish a prompt and efficient means of correcting, sealing, and expunging certain criminal history record information.

SECTION 2. The heading to Chapter 60, Code of Criminal Procedure, is amended to read as follows:

CHAPTER 60. CRIMINAL HISTORY RECORD COLLECTION [~~SYSTEM~~]

SECTION 3. Title 1, Code of Criminal Procedure, is amended by adding Chapter 60A to read as follows:

CHAPTER 60A. CRIMINAL HISTORY RECORD ACCESS

SUBCHAPTER A. GENERAL PROVISIONS

Art. 60A.01. DEFINITIONS. (a) In this chapter:

(1) "Criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, citations, detentions, indictments, informations, and other formal criminal charges and their dispositions. The term does not include:

(A) identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the

1 criminal justice system; or

2 (B) driving record information maintained by the
3 department under Subchapter C, Chapter 521, Transportation Code.

4 (2) "Data miner" means any private person who collects
5 government information for the purpose of reselling that
6 information to others.

7 (3) "Deferred adjudication" means:

8 (A) deferred adjudication community supervision
9 under Section 5, Article 42.12;

10 (B) placement on probation for a deferred
11 disposition under Article 45.051; or

12 (C) any other disposition in which:

13 (i) the defendant enters a plea of guilty or
14 nolo contendere;

15 (ii) the judge places the person under the
16 supervision of the court or an officer under the supervision of the
17 court;

18 (iii) at the end of the period of
19 supervision or probation the judge does not enter a judgment of
20 conviction or vacates a judgment of conviction previously entered;
21 and

22 (iv) at the end of the period of supervision
23 or probation the judge dismisses the proceedings and discharges the
24 defendant.

25 (4) "Department" means the Department of Public
26 Safety.

27 (5) "Expunge" and "expunction" mean the physical

destruction or alteration of records so that no possibility exists that any person could use the records to identify a particular person as having been accused of involvement in criminal activity.

(6) "Nonconviction records" means criminal history record information that does not include a disposition by conviction or deferred adjudication, including records of arrest, citation, detention, charges, and court proceedings where no disposition by conviction or deferred adjudication occurs.

(7) "Office of court administration" means the Office of Court Administration of the Texas Judicial System.

(8) "Record" means any writing or photograph, including:

(A) any letters, words, or numbers or their equivalent, set down by handwriting, typewriting, printing, photostating, photographing, magnetic impulse, mechanical or electronic recording, or other form of data compilation; and

(B) still photographs, x-ray films, videotapes, and motion pictures set down by any method listed in Paragraph (A).

(9) "Seal" means a procedure by which state and local agencies may retain criminal history record information but are required to withhold that information from public access.

(10) "Sensitive service agency" means a governmental or nongovernmental agency, other than a criminal justice agency, that has a compelling reason to access sealed records.

(b) A term that is used in this chapter but is not defined by Subsection (a) has the meaning assigned by Chapter 60.

Art. 60A.02. WAIVER OF RIGHTS CONCERNING CRIMINAL RECORDS.

1 An explicit or implicit waiver of any right to seal, expunge, or
2 correct criminal history records under this chapter is not
3 effective unless:

4 (1) the waiver is written in the primary language of
5 the waiving party;

6 (2) the waiver contains a warning that criminal
7 history record information that cannot be sealed, expunged, or
8 corrected may have serious consequences for the waiving party's
9 future employment, education, housing, and credit;

10 (3) the waiver contains a recommendation that the
11 waiving party consult an attorney before agreeing to the waiver,
12 and describes the waiving party's options for consulting an
13 attorney, including the option to seek appointed counsel under
14 Article [1.051](#) or [26.04](#); and

15 (4) the content of the written waiver, including the
16 dangers and disadvantages of waiving rights under this chapter, is
17 discussed orally with the waiving party by a qualified person who
18 attests to the discussion in the waiver.

19 SUBCHAPTER B. DEPARTMENT OF PUBLIC SAFETY: DISSEMINATION
20 OF AND ACCESS TO RECORDS

21 Art. 60A.11. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION.

22 (a) A criminal justice agency may access any criminal history
23 record information necessary to:

24 (1) conduct any activity included in the
25 administration of criminal justice; or

26 (2) screen applicants for employment with a criminal
27 justice agency.

1 (b) A sensitive service agency may access all conviction and
2 deferred adjudication records, except for records of Class C
3 misdemeanors, maintained by the department, whether sealed or
4 unsealed, for the purpose for which access was granted to the
5 agency.

6 (c) Any person may access for any purpose:

7 (1) all records of convictions, other than for a Class
8 C misdemeanor;

9 (2) all records of deferred adjudications, other than
10 deferred dispositions granted for a Class C misdemeanor, that are
11 not sealed;

12 (3) all nonconviction records, including records of
13 arrests, citations, detentions, charges, and court proceedings not
14 ending in conviction, that:

15 (A) a criminal justice agency chooses to make
16 available under this chapter and Section 552.108, Government Code;
17 or

18 (B) a judicial agency chooses to make available
19 under the applicable court rules and this chapter.

20 (d) Any individual, or that individual's attorney or other
21 legal representative acting in a fiduciary capacity, may access any
22 criminal history record information identifying that individual,
23 for any purpose.

24 Art. 60A.12. ACCESS FEES. (a) The department is the only
25 agency authorized to charge a fee for access to criminal history
26 record information. A state or local agency other than the
27 department may not charge a fee for providing access to criminal

1 history record information.

2 (b) The department may not charge a fee to provide criminal
3 history record information in response to an inquiry from:

- 4 (1) a criminal justice agency;
5 (2) the office of capital writs; or
6 (3) an appointed defense counsel who affirms that the
7 information is needed to represent an indigent defendant.

8 (c) The department may charge a fee of:

9 (1) \$10 for each public inquiry for criminal history
10 record information on a person that is processed only on the basis
11 of the person's name, unless the inquiry is submitted
12 electronically, in which event the fee is \$1;

13 (2) \$15 for each public inquiry for criminal history
14 record information on a person that is processed on the basis of a
15 fingerprint comparison search; and

16 (3) an amount sufficient to recover all costs directly
17 or indirectly incurred by the department in providing accurate,
18 relevant, and updated criminal history record information in
19 response to any inquiry for criminal history record information
20 from a data miner.

21 Art. 60A.13. NATURE OF RECORDS. The department at all times
22 retains ownership of data maintained in the department's records,
23 including records containing criminal history record information,
24 and may only license the use of the department's data for a period
25 of not more than 90 days, unless the department specifies another
26 period by rule.

27 Art. 60A.14. INTERNET WEBSITE. The department shall

1 consult with the office of court administration and the attorney
2 general as the department considers necessary to create and
3 maintain an Internet website that:

4 (1) uses electronic means to facilitate access to all
5 criminal history record information described in this chapter;

6 (2) provides access to this chapter and all rules
7 adopted under this chapter;

8 (3) effectively communicates how a person may access,
9 seal, and expunge records under this chapter without legal
10 representation;

11 (4) notifies the person who accesses criminal history
12 record information of applicable criminal penalties; and

13 (5) contains the following warning:

14 "CRIMINAL HISTORY RECORDS CHANGE OVER TIME. Records often
15 change due to further investigation of facts, reporting errors, and
16 decisions made by prosecutors and judges. Check the date on each
17 record obtained from this website. The older the date, the less
18 trustworthy the record."

19 Art. 60A.15. RULES. (a) The department shall adopt rules
20 to administer this chapter.

21 (b) Rules adopted under this article must provide for:

22 (1) a uniform method of requesting criminal history
23 record information from the department;

24 (2) the methods and formats for dissemination of
25 criminal history record information;

26 (3) security measures and policies that are designed
27 to guard against unauthorized release or dissemination of criminal

1 history record information that is maintained by the department;

2 (4) a uniform method of requesting that the department
3 seal the department's records and notifying other agencies to seal
4 records possessed by the agency under Subchapter G; and

5 (5) the transmission of information among agencies by
6 electronic means whenever possible and in accordance with record
7 transmission procedures adopted by the office of court
8 administration.

9 (c) The department may adopt rules requiring a person
10 requesting criminal history record information to submit any
11 specific information considered necessary by the department.

12 SUBCHAPTER C. ACCESS GRANTED BY DEPARTMENT TO CERTAIN
13 SENSITIVE SERVICE AGENCIES

14 Art. 60A.21. ACCESS PROVIDED TO SENSITIVE SERVICE AGENCIES.

15 (a) Sensitive service agencies may access deferred adjudication
16 records from the department even if those records are subject to an
17 order of sealing under Subchapter G.

18 (b) The following are considered to be sensitive service
19 agencies under this chapter:

20 (1) the State Board for Educator Certification;

21 (2) a school district, charter school, public school,
22 private school, or regional education service center;

23 (3) the Texas Medical Board;

24 (4) the Texas School for the Blind and Visually
25 Impaired;

26 (5) the Texas Board of Law Examiners;

27 (6) the State Bar of Texas;

1 (7) a district court regarding a petition for name
2 change under Subchapter B, Chapter 45, Family Code;

3 (8) the Texas School for the Deaf;

4 (9) the Department of Family and Protective Services;

5 (10) the Texas Department of Juvenile Justice;

6 (11) the Department of Assistive and Rehabilitative
7 Services;

8 (12) the Department of State Health Services, a local
9 mental health service, a local intellectual and developmental
10 disability authority, or a community center providing services to
11 persons with mental illness or intellectual disabilities;

12 (13) the Texas Private Security Board;

13 (14) a municipal or volunteer fire department;

14 (15) the Texas Board of Nursing;

15 (16) a safe house providing shelter to children in
16 harmful situations;

17 (17) a public or nonprofit hospital or hospital
18 district, or a facility defined by Section [250.001](#), Health and
19 Safety Code;

20 (18) the securities commissioner, the banking
21 commissioner, the savings and mortgage lending commissioner, the
22 consumer credit commissioner, and the credit union commissioner;

23 (19) the Texas State Board of Public Accountancy;

24 (20) the Texas Department of Licensing and Regulation;

25 (21) the Health and Human Services Commission;

26 (22) the Department of Aging and Disability Services;

27 (23) the Texas Education Agency;

1 (24) the Judicial Branch Certification Commission;

2 (25) every county clerk's office in relation to a
3 proceeding for the appointment of a guardian under Title 3, Estates
4 Code;

5 (26) the Department of Information Resources;

6 (27) the Court Reporters Certification Advisory
7 Board;

8 (28) the Texas Department of Insurance;

9 (29) the Teacher Retirement System of Texas;

10 (30) the Texas State Board of Pharmacy; and

11 (31) contractors and subcontractors only for purposes
12 of compliance with an explicit term addressing criminal history
13 record information that is stated in a contract with a special
14 services agency.

15 (c) The department by rule may designate an additional
16 agency as a sensitive services agency if:

17 (1) the agency primarily serves vulnerable
18 populations and has a demonstrated need for access to the
19 information; and

20 (2) the senate and house committees with jurisdiction
21 over criminal justice issues consent to the addition.

22 Art. 60A.22. WRITTEN PROCEDURES. A sensitive service
23 agency may not access sealed records unless the agency adopts
24 written procedures specifying how criminal history record
25 information may disqualify an applicant from employment,
26 licensure, housing, or educational benefit. Each procedure must
27 state the manner in which an agency official will determine on a

case-by-case basis whether the applicant is qualified based on factors that include:

(1) the specific responsibilities that the applicant seeks to undertake;

(2) the nature and seriousness of each offense committed by the applicant;

(3) the period that elapsed between each offense and the agency decision on the application; and

(4) the efforts made by the applicant toward rehabilitation.

SUBCHAPTER D. PRIVATE ENTITIES

Art. 60A.31. ACCESS PROVIDED BY DATA MINERS; PROHIBITED ACTS. (a) A person may directly or indirectly purchase criminal history record information from the department and resell that information subject to any license granted by the department.

(b) A person may not directly or indirectly cause the purchase or sale of criminal history record information that is not subject to a department license of use.

Art. 60A.32. DUTIES OF DATA MINERS. (a) Each person who purchases from the department criminal history record information for resale to others shall destroy all records of the information, including all paper copies and all copies that may be distributed by electronic means, within the person's possession or control with respect to which the person has received notice that:

(1) the department or a court issued an order of sealing covering the information under Subchapter G;

(2) a court issued an order of expunction covering the

1 information under Subchapter H; or

2 (3) a period of at least 90 days, or another period
3 prescribed by department rule, has passed since the department
4 provided the information.

5 (b) Each person who purchases from the department criminal
6 history record information for resale to others must:

7 (1) maintain an e-mail account to receive electronic
8 service of orders issued in response to petitions for expunction or
9 nondisclosure under this chapter;

10 (2) provide the e-mail address described by
11 Subdivision (1) to the department and to the district clerk in every
12 county;

13 (3) monitor the e-mail account described by
14 Subdivision (1) at least once each week; and

15 (4) comply with each order of expunction and with each
16 order of sealing issued under this chapter.

17 SUBCHAPTER E. LOCAL AGENCIES

18 Art. 60A.41. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION
19 PROVIDED BY OTHER GOVERNMENT AGENCIES. (a) A judicial or executive
20 agency, other than the department, may permit public access to
21 criminal history record information that the agency creates and
22 maintains in the regular course of performing the agency's official
23 duties, subject to the requirements of this chapter.

24 (b) An agency other than the department may not directly or
25 indirectly charge any person any fee for providing access to
26 criminal history record information.

27 Art. 60A.42. ACCESS TO NONCONVICTION INFORMATION PROVIDED

1 BY OTHER GOVERNMENT AGENCIES. An agency other than the department
2 may provide public access to nonconviction criminal history record
3 information only if:

4 (1) the agency warns the person accessing the records
5 that state law imposes civil and criminal penalties on anyone who
6 knowingly causes nonconviction records to be purchased or sold;

7 (2) the agency provides access to records:

8 (A) only at the agency's physical office, and not
9 remotely by electronic means;

10 (B) for one individual at a time, and not in bulk;

11 (C) in a format that omits the subject's social
12 security number and other personal identifying information
13 commonly sought by identity thieves; and

14 (D) in accordance with rules prescribed by the
15 office of court administration for judicial agencies, and by the
16 attorney general for executive agencies, to prevent the bulk
17 dissemination of searchable nonconviction records.

18 Art. 60A.43. DUTIES OF AGENCY MAKING CRIMINAL HISTORY
19 RECORD INFORMATION AND NONCONVICTION RECORDS AVAILABLE TO PUBLIC.
20 Each agency that chooses to make criminal history record
21 information or nonconviction records available to the public must:

22 (1) maintain an e-mail account to receive electronic
23 service of hearings and orders issued in response to petitions for
24 expunction or sealing under this chapter;

25 (2) provide the e-mail address described by
26 Subdivision (1) to the department and to the district clerk in each
27 county within the agency's jurisdiction;

1 (3) monitor the e-mail account described by
2 Subdivision (1) at least once each week; and

3 (4) comply with each order of expunction and with each
4 order of sealing issued under this chapter.

5 SUBCHAPTER F. PROHIBITED ACTS; OFFENSES; CIVIL PENALTIES

6 Art. 60A.51. PROHIBITED ACTS. (a) A person may not
7 directly or indirectly purchase or sell any form of public access to
8 any nonconviction record for any amount of money or other valuable
9 consideration.

10 (b) A person who has accessed criminal history record
11 information for one purpose may not use that information for a
12 different purpose, or make the information available to different
13 persons, unless specifically authorized by statute, department
14 rule, or court order.

15 (c) A person may not confirm the existence or absence of
16 criminal history record information to any person who is not
17 authorized to access the information.

18 Art. 60A.52. BULK DISTRIBUTION PROHIBITED. (a) The
19 department may not sell or otherwise provide public access to
20 criminal history record information in any bulk form.

21 (b) The department may sell the means to access one
22 individual's record for a single request, and prominently display
23 the date that the department provided each record.

24 Art. 60A.53. SUSPENSION OF ACCESS BY DEPARTMENT. (a) The
25 department shall suspend a person's access to criminal history
26 record information maintained by the department if the person
27 violates or fails to comply with:

1 (1) rules adopted by the department under this
2 chapter; or

3 (2) rules adopted by the Federal Bureau of
4 Investigation that relate to the dissemination or use of criminal
5 history record information.

6 (b) The department shall set the length of a person's
7 suspension under this article for a period calculated to ensure the
8 person's complete compliance with department rules in the future.

9 Art. 60A.54. OFFENSE: UNAUTHORIZED USE OR DISCLOSURE. (a)
10 A person commits an offense if the person knowingly:

11 (1) obtains criminal history record information in a
12 manner other than as authorized by this chapter;

13 (2) uses criminal history record information for a
14 purpose other than as authorized by this chapter; or

15 (3) discloses criminal history record information to a
16 person who is not entitled to the information under this chapter or
17 department rules.

18 (b) An offense under this article is a Class B misdemeanor,
19 except that the offense is a felony of the second degree if the
20 offense is committed for remuneration or the promise of
21 remuneration.

22 Art. 60A.55. OFFENSE: PURCHASE OR SALE OF NONCONVICTION
23 RECORDS. (a) A person commits an offense if the person knowingly
24 purchases or sells nonconviction records.

25 (b) An offense under this article is a felony of the second
26 degree.

27 (c) For purposes of this article, a person purchases or

1 sells access to nonconviction records if the person causes or
2 employs another to cause the content of more than 10 nonconviction
3 records to be made available by any form of search criteria in
4 direct or indirect exchange for money or other valuable
5 consideration, or for the promise of anything of value.

6 Art. 60A.56. CIVIL LIABILITY. (a) A person may not:

7 (1) obtain criminal history records in a manner other
8 than as authorized by this chapter;

9 (2) use the records for a purpose other than as
10 authorized by this chapter; or

11 (3) disclose the information to a person who is not
12 entitled to the information under this chapter or department rules.

13 (b) A person who violates Subsection (a) is liable to each
14 subject of the criminal history record information for:

15 (1) a civil penalty of \$1,000; and

16 (2) actual damages sustained as a result of the
17 violation.

18 (c) A person who prevails in an action brought under this
19 article is entitled to recover court costs and reasonable
20 attorney's fees.

21 SUBCHAPTER G. LIMITING ACCESS BY SEALING

22 Art. 60A.61. AUTOMATIC SEALING OF NONCONVICTION RECORDS
23 AFTER CHARGES ARE REJECTED OR DISMISSED. (a) Each time the state
24 files a document with a municipal, justice, county, or district
25 clerk in which the state dismisses or rejects a case, complaint,
26 information, or indictment, the clerk shall transmit to the
27 department:

1 (1) the state's filed document; and

2 (2) any other information that the department requires
3 to seal the records associated with the dismissed or rejected
4 charges.

5 (b) The clerk shall transmit by electronic means all
6 information required by the department in a single transmission not
7 later than the fifth business day after the date the document is
8 filed under Subsection (a).

9 (c) Not later than the 10th business day after the date a
10 document described by Subsection (a) is filed, the state may
11 prevent automatic sealing of nonconviction records under this
12 article by notifying the department that the state intends to
13 pursue different charges arising from the same incident.

14 (d) Not earlier than the 11th business day but not later
15 than the 15th business day after the date the department receives
16 notice of a document filed under Subsection (a), if the department
17 has not received notice from the state under Subsection (c), the
18 department shall cause all records related to the charge and the
19 arrest or citation to be automatically sealed under Article 60A.64.

20 Art. 60A.62. COURT SEALING WHEN CHARGES DELAYED. (a) A
21 person who has been arrested or issued a citation for commission of
22 an offense may make a motion to seal records related to the arrest
23 or citation if no information or indictment is pending, and all
24 complaints that produced the arrest or citation:

25 (1) are pending; or

26 (2) were dismissed or rejected.

27 (b) A motion under Subsection (a) must be made in the court

1 where a charge based on the arrest or citation was last pending. A
2 cost or fee is not required to file or adjudicate the motion.

3 (c) The court shall notify the state of a hearing on the
4 motion not later than the fifth business day before the date of the
5 hearing. If the state files an indictment or information before the
6 date of the hearing, the court shall deny the motion without a
7 hearing.

8 (d) On hearing, the court shall order records of any arrest
9 or citation subject to delayed, rejected, or dismissed charges to
10 be sealed if:

11 (1) the court finds sealing the records to be in the
12 best interest of justice; or

13 (2) the following period has passed after the arrest
14 or citation with no information or indictment pending:

15 (A) three months if the only offenses charged by
16 complaint on arrest or citation were Class C misdemeanors;

17 (B) six months if a Class B or A misdemeanor was
18 charged by complaint on arrest, but no felony was charged; and

19 (C) one year if any felony was charged by
20 complaint on arrest.

21 (e) The clerk shall forward to the department by electronic
22 means each order sealing records under this article. On receiving
23 an order sealing records, the department shall cause all records
24 related to the charge and the arrest or citation to be sealed as
25 provided in the court's order.

26 (f) The office of court administration shall prescribe and
27 publish on its Internet website a form that courts may use to issue

orders under this article.

Art. 60A.63. ORDER OF DISCHARGE AND DISMISSAL OF DEFERRED ADJUDICATION. (a) Any time after expiration of a period of deferred adjudication or probation, the defendant may file a motion under the criminal cause number to seek an order of discharge and dismissal. A cost or fee is not required to file or adjudicate the motion.

(b) If the defendant is eligible for an order of discharge and dismissal, the court shall promptly grant a motion under this subchapter.

(c) The effective date of each discharge and dismissal for purposes of this subchapter is the date that the period of deferred adjudication or probation expired or was successfully completed by the defendant, not the date on which the court entered the order. The effective date must be written on each order of discharge and dismissal.

(d) Each order of discharge and dismissal shall state:
"If the defendant meets all requirements for automatic sealing of criminal history record information under Subchapter G, Chapter 60A, Code of Criminal Procedure, the defendant's records of the offenses at issue in this cause shall be sealed."

(e) The court clerk shall provide one certified copy of each order of discharge and dismissal to the defendant without charge.

Art. 60A.64. AUTOMATIC SEALING AFTER DISCHARGE AND DISMISSAL. (a) A defendant placed on deferred adjudication is eligible for automatic sealing under this subchapter:

(1) on:

1 (A) the effective date of the discharge and
2 dismissal if the offense for which the person was placed on deferred
3 adjudication was a misdemeanor other than a misdemeanor described
4 in Paragraph (B);

5 (B) the second anniversary of the effective date
6 of the discharge and dismissal if the offense for which the person
7 was placed on deferred adjudication was a misdemeanor offense
8 involving violence under Chapter 20, 21, 22, 25, 42, or 46, Penal
9 Code; or

10 (C) the fifth anniversary of the effective date
11 of the discharge and dismissal if the offense for which the person
12 was placed on deferred adjudication was a felony; and

13 (2) provided that the defendant:

14 (A) was not convicted or placed on deferred
15 adjudication for any offense during the entire period of deferred
16 adjudication and waiting period under Subdivision (1), other than
17 an offense under the Transportation Code punishable by fine only;
18 and

19 (B) has never been convicted or placed on
20 deferred adjudication for:

21 (i) an offense requiring registration as a
22 sex offender under Chapter 62;

23 (ii) an offense under Section 20.04, Penal
24 Code, regardless of whether the offense is a reportable conviction
25 or adjudication for purposes of Chapter 62;

26 (iii) an offense under Section 19.02,
27 19.03, 22.04, 22.041, 25.07, 25.072, or 42.072, Penal Code; or

1 (iv) any felony offense involving family
2 violence, as defined by Section 71.004, Family Code.

3 (b) If the agency responsible for a defendant's community
4 supervision or probation concludes that the defendant is eligible
5 for automatic sealing under this article, the agency shall notify
6 the state.

7 (c) If the state objects to automatic sealing and, not later
8 than the 10th business day after the date the state receives notice
9 that the defendant is eligible for automatic sealing, notifies the
10 agency responsible for the defendant's supervision or probation of
11 the objection, the records may not be automatically sealed.

12 (d) If the agency responsible for the defendant's
13 supervision or probation does not receive a timely objection from
14 the state as described by Subsection (c), the agency shall, on or
15 after the 11th business day after the date the agency notifies the
16 state under Subsection (b):

17 (1) promptly notify the department that the defendant
18 is eligible for automatic sealing; and

19 (2) provide the department with a copy of the order of
20 discharge and dismissal and all information regarding the criminal
21 history record information to be sealed that the department
22 requires.

23 (e) On receipt of an order of discharge and dismissal and
24 the appropriate agency's statement that the defendant is eligible
25 for automatic sealing, the department shall cause to be sealed all
26 criminal history records related to the offense for which the
27 person was placed on deferred adjudication.

1 Art. 60A.65. COURT SEALING DEFERRED ADJUDICATION RECORDS BY
2 MOTION. (a) If the agency responsible for the defendant's
3 supervision or probation declines to automatically seal criminal
4 history record information under Article 60A.64, the defendant may
5 file a motion to seal the records.

6 (b) A motion under this article must be filed under the
7 criminal cause number and in the court that placed the defendant on
8 deferred adjudication.

9 (c) In ruling on a motion under this article, the court must
10 make a finding as to whether the defendant is eligible for record
11 sealing under Article 60A.64. If the court does not make a finding
12 that the defendant is eligible, the court may not order the records
13 sealed.

14 (d) If the defendant is eligible for record sealing under
15 Article 60A.64, the court shall decide whether to order the records
16 sealed based on the court's determination of the best interest of
17 justice.

18 (e) In response to a motion under this article, the court
19 shall enter an order sealing the deferred adjudication records or
20 deny the motion. If the court orders records sealed, the clerk
21 shall electronically transmit the order to the department.

22 (f) Not later than the 10th business day after the date the
23 department receives an order under this article, the department
24 shall cause the records to be sealed as provided in the order.

25 Art. 60A.66. UNSEALING OF DEFERRED ADJUDICATION RECORDS BY
26 MOTION. (a) At any time before the second anniversary of the date
27 criminal history record information is sealed under Article 60A.64

1 or 60A.65, the state may file a motion to unseal the records.

2 (b) A motion under this article must be filed under the
3 criminal cause number and in the court that placed the defendant on
4 deferred adjudication.

5 (c) In ruling on a motion under this article, the court
6 shall determine whether the defendant is eligible for record
7 sealing under Article 60A.64. If the court determines the
8 defendant is ineligible under that article, the court may not order
9 the records to remain sealed.

10 (d) If the defendant is eligible for record sealing under
11 Article 60A.64, the court shall decide whether to order the records
12 unsealed based on the court's determination of the best interest of
13 justice.

14 (e) In response to a motion under this article, the court
15 shall enter an order unsealing the deferred adjudication records or
16 an order directing the records to remain sealed. If the court
17 orders sealed records to be unsealed, the clerk shall
18 electronically transmit the order to the department.

19 (f) Not later than the 10th business day after the date the
20 department receives an order under this article, the department
21 shall cause the records to be unsealed as provided in the order.

22 Art. 60A.67. SEALING PROCEDURE AND EFFECT. (a) If the
23 department is required to cause records to be sealed under this
24 subchapter, not later than the 10th business day after the date that
25 the department receives the information that the department
26 requires to seal records, the department shall:

27 (1) seal the department's own records;

1 (2) prepare a document:

2 (A) stating: "By order of court and operation of
3 Subchapter G, Chapter 60A, Code of Criminal Procedure, please take
4 notice that within 30 days, you must take all actions necessary to
5 prevent public access to the following records in your custody or
6 control."; and

7 (B) indicating all of the criminal history record
8 information needing to be sealed; and

9 (3) transmit by electronic means the document
10 described by Subdivision (2) to each:

11 (A) magistrate, court, prosecuting attorney,
12 correctional facility, central state depository of criminal
13 records, and any other official or agency or other entity of this
14 state or of a political subdivision of this state;

15 (B) central federal depository of criminal
16 records if there is reason to believe that depository has criminal
17 history record information that is the subject of the order;

18 (C) private entity that purchases criminal
19 history record information from the department or that otherwise is
20 likely to have criminal history record information that is subject
21 to the order; and

22 (D) e-mail address provided under Articles
23 60A.32 and 60A.43.

24 (b) Not later than the 30th business day after the date of
25 receipt of a sealing notice described by Subsection (a)(2), each
26 person receiving notice shall seal all criminal history record
27 information maintained by the person that is described in the

1 sealing notice.

2 Art. 60A.68. EFFECT OF SEALING. (a) A person whose
3 criminal history record information is sealed under this subchapter
4 is not required in any application for employment, education,
5 housing, licensure, or credit to state that the person has been the
6 subject of any criminal proceeding related to the sealed records.

7 (b) A person may not discriminate against an applicant for
8 employment, education, housing, licensure, or credit on the ground
9 that the applicant withheld information as authorized by Subsection
10 (a).

11 (c) A criminal justice agency or sensitive service agency
12 may inquire about the events that produced the sealed records and
13 use information about the events giving rise to the record as one
14 factor, but not the sole factor, in making an employment,
15 education, licensing, or housing decision.

16 Art. 60A.69. FORM. The office of court administration
17 shall prescribe and publish forms by electronic means that courts
18 may use to issue orders under this subchapter.

19 SUBCHAPTER H. LIMITING ACCESS BY EXPUNCTION

20 Art. 60A.71. RIGHT TO EXPUNCTION. (a) A person who has
21 been placed under a custodial or noncustodial arrest for commission
22 of a felony or misdemeanor or issued a citation for the commission
23 of a misdemeanor is entitled to have all records relating to the
24 arrest or citation expunged if:

25 (1) the person is tried for the offense for which the
26 person was arrested or issued a citation and is acquitted by a trial
27 or appellate court, and if acquitted by a court of appeals, the

1 period for filing a petition for discretionary review has expired;

2 (2) the person is convicted and subsequently granted
3 judicial or executive relief from conviction if the order granting
4 relief states that the order is rendered on the basis of the
5 person's actual innocence;

6 (3) the person is convicted and subsequently pardoned;

7 (4) following the arrest or citation, the person was
8 charged with a Class C misdemeanor for which the person was granted
9 a discharge and dismissal;

10 (5) the state certifies that the records are not
11 needed for use in any criminal investigation or prosecution,
12 including an investigation or prosecution of another person;

13 (6) an information or indictment was dismissed or
14 quashed following arrest, no other information or indictment is
15 pending from the arrest, and the court finds that the indictment or
16 information was dismissed or quashed because:

17 (A) the person completed a pretrial intervention
18 program authorized under Section 76.011, Government Code;

19 (B) the presentment of the indictment or
20 information had been made because of mistake, false information, or
21 other similar reason indicating absence of probable cause at the
22 time of the dismissal to believe the person committed the offense;
23 or

24 (C) the indictment or information was void; or

25 (7) prosecution of the person for the offense for
26 which the person was arrested or issued a citation is no longer
27 possible because the limitations period has expired.

1 (b) When some but not all charges arising from an arrest or
2 citation qualify for expunction under Subsection (a), the right to
3 expunction extends to all records of the qualifying charges, but
4 not to any arrest, citation, or charge that does not qualify.

5 (c) If a defendant becomes eligible for records expunction
6 while represented by counsel appointed under Article 26.04, counsel
7 shall:

8 (1) advise the defendant of the effect of expunction
9 on civil and criminal proceedings and of the appropriate time to
10 seek expunction; and

11 (2) petition for expunction as part of appointed
12 counsel's duties on request of the defendant.

13 Art. 60A.72. DISTRICT COURT DECIDES EXPUNCTIONS. (a) The
14 following persons may file an ex parte civil action seeking
15 expunction under this subchapter:

16 (1) a person who claims a right to expunction; or

17 (2) if the person is deceased, the deceased person's
18 grandparent, parent, spouse, adult brother, adult sister, or adult
19 child.

20 (b) An expunction petition must be filed in the district
21 court for the county in which:

22 (1) the arrest or citation at issue occurred; or

23 (2) the offense at issue was alleged to have occurred.

24 (c) An expunction petition must include:

25 (1) the following identification information for the
26 person claiming the right to expunction:

27 (A) full name;

1 (B) gender;

2 (C) race;

3 (D) date of birth;

4 (E) driver's license number, if any;

5 (F) social security number, if any; and

6 (G) address at the time of the arrest or
7 citation, if known;

8 (2) the following arrest or citation information:

9 (A) the date the person was arrested or the
10 citation was issued;

11 (B) whether an arrest was custodial or
12 noncustodial;

13 (C) the name of the arresting agency or agency
14 issuing the citation;

15 (D) the name of the county where the arrest or
16 issuance of a citation occurred; and

17 (E) the name of the municipality where the arrest
18 or issuance of a citation occurred, if any;

19 (3) for each offense charged in connection with the
20 arrest or citation:

21 (A) the offense charged;

22 (B) the date that each charged offense is alleged
23 to have occurred; and

24 (C) the court and case number for each charged
25 offense; and

26 (4) which rights to expunction apply to each charge
27 and each arrest or citation, as applicable.

1 (d) On filing of each expunction petition, the court's clerk
2 shall:

3 (1) seal from public access all of its files in the
4 expunction case that identify the petitioner;

5 (2) consult the court coordinator of the assigned
6 court and set a hearing date for each petition that is not earlier
7 than the 30th calendar day after the date of the petition but not
8 later than the 60th calendar day after the date of the petition; and

9 (3) not later than the next business day after the date
10 the expunction petition is filed, electronically transmit a copy of
11 the petition and the hearing date, time, and place to:

12 (A) the district attorney;

13 (B) the county attorney;

14 (C) the department; and

15 (D) any criminal justice agency that has
16 requested electronic notice of expunction proceedings from the
17 court's clerk.

18 (e) The court may grant any expunction petition at any time
19 without a hearing if the district or county attorney agrees in
20 writing that the petition should be granted.

21 (f) At each expunction hearing the district court shall
22 decide:

23 (1) whether the petitioner has proved a right to
24 expunction by a preponderance of the evidence; and

25 (2) whether the county or district attorney has proved
26 by a preponderance of the evidence that due to ongoing criminal,
27 civil, or administrative proceedings, exceptions to expunction

should be made, each of which must specify:

(A) what records may be maintained;

(B) which criminal justice agencies may maintain the records; and

(C) for what period each criminal justice agency may maintain each record before destroying the record in compliance with the expunction order.

(g) Not later than the third business day after the date of an expunction hearing, the district court shall enter an order directing or denying expunction. Each order granting expunction shall state:

(1) the information identifying the person whose records are to be expunged required under Subsection (c)(1);

(2) the incident number the department assigned the individual incident of arrest under Article 60.07(b)(1), if any;

(3) which arrests or citations listed in Subsection (c)(2) are expunged;

(4) which charged offenses listed in Subsection (c)(3) are expunged; and

(5) any expunction limitations proved necessary by the county or district attorney.

(h) The person who is the subject of the expunction order or any agency receiving the expunction order may appeal the court's decision in the same manner as in any other civil case.

(i) Immediately on entry of each expunction order, the district court clerk shall:

(1) provide without charge one certified paper copy of

1 the order to the petitioner;

2 (2) transmit a copy of the order by electronic means to
3 the department's Crime Records Service;

4 (3) transmit a copy of the order by electronic means to
5 each person and agency that has provided an e-mail address to the
6 district clerk under Articles 60A.32 and 60A.43; and

7 (4) on the 30th calendar day after the date of the
8 expunction order, expunge the court's entire case file.

9 Art. 60A.73. EXPUNCTION PROCEDURE AND EFFECT; CRIMINAL
10 PENALTIES. (a) Not later than the 10th business day after the date
11 the department receives an expunction order from a district clerk,
12 the department must expunge all charge records and all arrest or
13 citation records as ordered.

14 (b) Not later than the 30th calendar day after the date a
15 person or agency receives an expunction order from a district
16 clerk, the person or agency shall expunge all charge records and
17 arrest or citation records in the possession of the person or
18 agency, as ordered.

19 (c) A record is expunged only if it is physically or
20 electronically altered in a way that renders impossible any use of
21 the record to connect the person identified in the order as
22 connected to the expunged arrest, citation, or charge.

23 Art. 60A.74. OFFENSE: FAILURE TO DESTROY RECORDS SUBJECT TO
24 ORDER OF EXPUNCTION. (a) A person who knowingly fails to destroy
25 identifying portions of a record ordered expunged under this
26 chapter commits an offense.

27 (b) An offense under this article is a Class B misdemeanor,

1 except that:

2 (1) the offense is a Class A misdemeanor if the person
3 has been previously convicted of an offense under this article; and

4 (2) the offense is a second degree felony if the person
5 has been previously convicted two or more times of an offense under
6 this article.

7 Art. 60A.75. OFFENSE: RELEASE OF EXPUNGED INFORMATION. (a)
8 A person commits an offense if the person releases, publishes, or
9 uses records the person knows have been ordered expunged under this
10 chapter.

11 (b) An offense under this article is a Class B misdemeanor,
12 except that:

13 (1) the offense is a Class A misdemeanor if the person
14 has been previously convicted of an offense under this article; and

15 (2) the offense is a second degree felony if the person
16 has been previously convicted two or more times of an offense under
17 this article.

18 Art. 60A.76. EFFECT OF EXPUNCTION. (a) A person whose
19 criminal history record information has been expunged under this
20 subchapter may deny the occurrence of the arrest, citation, or
21 charge and the existence of the expunction order.

22 (b) A person may not discriminate against an applicant for
23 employment, housing, education, licensure, or credit because the
24 applicant withheld information on an application as permitted by
25 Subsection (a).

26 (c) If any person is questioned under oath in a criminal
27 proceeding about an arrest, citation, or charge for which the

1 records have been expunged, the person may state only that the
2 matter in question has been expunged.

3 Art. 60A.77. FORMS. The office of court administration
4 shall prescribe and publish by electronic means forms for the
5 petition for expunction and order for expunction under this
6 subchapter.

7 SUBCHAPTER I. CORRECTING ERRONEOUS RECORDS

8 Art. 60A.81. CENTRALIZED CORRECTION REQUESTS;
9 INVESTIGATION. (a) Any person who becomes aware that criminal
10 history records contain erroneous information, that sealed records
11 are publicly available, or that expunged records are available, may
12 seek correction of records by filling out a form available on the
13 department's Internet website, or by telephoning the department's
14 Crime Records Service.

15 (b) The department shall collect and record all correction
16 requests without charging a fee and in a manner that facilitates
17 presentation of requests.

18 (c) The department shall investigate each request, and
19 electronically transmit a written statement or make a telephone
20 call informing the requestor of the status or response at least once
21 during each 30-day period until the request is resolved.

22 (d) The department may deny a request for failure to provide
23 necessary information only when the department is unable to get the
24 information from another source without significant time or
25 expense.

26 (e) The department may require a requestor to submit
27 fingerprints only if necessary to establish facts to correct the

1 record at issue. The department shall make necessary
2 fingerprinting available to requestors without charge.

3 Art. 60A.82. ADMINISTRATIVE CORRECTION OF ERRONEOUS
4 RECORDS. (a) If the department determines that any of the
5 department's criminal history record information contains an
6 error, the department shall correct the record and electronically
7 transmit notice to all agencies and persons the department
8 considers reasonably likely to have received the erroneous
9 information from the department. The notice must state that all
10 agencies and persons receiving the notice must correct the records.

11 (b) If the department becomes aware that a criminal justice
12 agency's criminal history records may be erroneous, the department
13 shall contact the agency and attempt to resolve the issue by
14 agreement.

15 (c) If the department and a criminal justice agency agree
16 that the agency's records contain an error, the agency shall
17 correct the record and the department shall correct all the
18 department records to be consistent with the agency's correction.
19 The department shall transmit notice of the correction
20 electronically to all agencies and persons the department considers
21 reasonably likely to have received the erroneous information from
22 the department. The notice must state that all agencies and persons
23 receiving the notice must correct the records.

24 Art. 60A.83. JUDICIAL CORRECTION OF ERRONEOUS RECORDS. (a)
25 If the department denies a correction request for any reason, the
26 requestor may file a civil action:

27 (1) in the district court where the requestor resides,

1 if the requestor resides in this state; or

2 (2) in the district court in Travis County, if the
3 requestor resides in another state.

4 (b) If the department does not deny a correction request,
5 but the correction is not administratively completed due to
6 disagreement with another criminal justice agency, the requestor
7 may file a civil action in the district court where the criminal
8 justice agency is located.

9 (c) The department and the department's counsel may appear
10 remotely, by telephone or video conference, in any civil proceeding
11 filed under this article.

12 (d) The only relief available in an action under this
13 article, after discovery, is:

14 (1) injunctive relief as necessary to secure accurate
15 criminal history records; and

16 (2) all litigation costs, not including attorney's
17 fees.

18 SUBCHAPTER J. REFERENCES IN LAW

19 Art. 60A.91. REFERENCES TO ORDERS OF NONDISCLOSURE AND
20 ORDERS OF EXPUNCTION. (a) A reference in law to an order of
21 nondisclosure or any provision of Subchapter F, Chapter 411,
22 Government Code, means a reference to record sealing under
23 Subchapter G of this code.

24 (b) A reference in law to expunction or any provision of
25 Chapter 55 means a reference to Subchapter H.

26 SECTION 4. The following are repealed:

27 (1) Chapter 55, Code of Criminal Procedure; and

1 (2) Subchapter F, Chapter 411, Government Code.

2 SECTION 5. A sensitive service agency is not required to
3 adopt the policy prescribed by Article 60A.22, Code of Criminal
4 Procedure, as added by this Act, before September 1, 2017.

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