

SENATE AMENDMENTS

2nd Printing

By: Alonzo, Collier

H.B. No. 3579

A BILL TO BE ENTITLED

AN ACT

relating to certain criminal record information; authorizing a fee.

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 any, for the offense for which the expunction is sought has been

1 dismissed or has not resulted in a final conviction for that
2 offense, the charge [~~and~~] is no longer pending, and there was no
3 court-ordered community supervision under Article 42.12 for that
4 [~~the~~] offense[~~7~~] unless the offense is a Class C misdemeanor,
5 provided that:

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

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

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

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

25 (c) at least three years have elapsed
26 from the date of arrest if the offense [~~arrest~~] for which the
27 expunction was sought was [~~for an offense~~] punishable as a felony or

1 if there was a felony charge arising out of the same transaction for
2 which the person was arrested; or

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

7 (ii) if presented at any time following the
8 person's arrest, was dismissed or quashed, and the court finds that
9 the indictment or information was dismissed or quashed because the
10 person completed a pretrial intervention program authorized under
11 Section 76.011, Government Code, because the presentment had been
12 made because of mistake, false information, or other similar reason
13 indicating absence of probable cause at the time of the dismissal to
14 believe the person committed the offense, or because the indictment
15 or information was void; or

16 (B) prosecution of the person for the offense for
17 which the person was arrested is no longer possible because the
18 limitations period has expired.

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

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

1 files relating to that arrest and to the proceedings conducted
2 under Chapter 17.

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

8 (1) the person is:

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

11 (B) convicted of the offense; and

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

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

21 (c) A court may not order the expunction of records and
22 files relating to [~~an arrest for~~] an offense for which a person is
23 subsequently acquitted, whether by the trial court, a court of
24 appeals, or the court of criminal appeals, if the offense for which
25 the person was acquitted arose out of a criminal episode, as defined
26 by Section 3.01, Penal Code, and the person was convicted of or
27 remains subject to prosecution for at least one other offense

1 occurring during the criminal episode.

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

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

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

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

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

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

26 (2) the following information regarding the arrest:

27 (A) the date of arrest;

1 (B) the offense charged against the person
2 arrested;

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

5 (D) the name of the arresting agency; and

6 (3) a statement that:

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

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

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

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

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

24 (a-1) The court shall provide in its expunction order that
25 the applicable law enforcement agency and prosecuting attorney may
26 retain the offense [~~arrest~~] records and files of any person who
27 becomes entitled to an expunction of those records and files based

1 on the expiration of a period described by Article
2 55.01(a)(2)(A)(i)(a), (b), or (c), but without the certification of
3 the prosecuting attorney as described by Article
4 55.01(a)(2)(A)(i)(d).

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

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

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

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

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

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

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

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

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

1 offense if he knowingly releases, disseminates, or otherwise uses
2 the records or files.

3 SECTION 7. Section 109.005(a), Business & Commerce Code, as
4 added by Chapter 1200 (S.B. No. 1289), Acts of the 83rd
5 Legislature, Regular Session, 2013, is amended to read as follows:

6 (a) A business entity may not publish any criminal record
7 information in the business entity's possession with respect to
8 which the business entity has knowledge or has received notice
9 that:

10 (1) an order of expunction has been issued under
11 Article 55.02, Code of Criminal Procedure; or

12 (2) an order of nondisclosure has been issued under
13 Section 411.081 [~~411.081(d)~~], Government Code.

14 SECTION 8. Section 103.0211, Government Code, is amended to
15 read as follows:

16 Sec. 103.0211. ADDITIONAL FEES AND COSTS IN CRIMINAL OR
17 CIVIL CASES: GOVERNMENT CODE. An accused or defendant, or a party
18 to a civil suit, as applicable, shall pay the following fees and
19 costs under the Government Code if ordered by the court or otherwise
20 required:

21 (1) a court reporter fee when testimony is taken:

22 (A) in a criminal court in Dallas County (Sec.
23 25.0593, Government Code) . . . \$3;

24 (B) in a county criminal court of appeals in
25 Dallas County (Sec. 25.0594, Government Code) . . . \$3;

26 (C) in a county court at law in McLennan County
27 (Sec. 25.1572, Government Code) . . . \$3; and

1 (D) in a county criminal court in Tarrant County
2 (Sec. 25.2223, Government Code) . . . \$3;

3 (2) a court reporter service fee if the courts have
4 official court reporters (Sec. 51.601, Government Code) . . . \$15
5 or, in specified counties, \$30;

6 (3) a speedy trial rights waiver motion filing fee in
7 El Paso County (Sec. 54.745, Government Code) . . . \$100;

8 (4) the costs of a criminal magistrate if the court
9 determines that the nonprevailing party is able to defray the
10 costs:

11 (A) in Bexar County (Sec. 54.913, Government
12 Code) . . . magistrate's fees;

13 (B) in Dallas County (Sec. 54.313, Government
14 Code) . . . magistrate's fees;

15 (C) in Lubbock County (Sec. 54.883, Government
16 Code) . . . magistrate's fees;

17 (D) in Tarrant County (Sec. 54.663, Government
18 Code) . . . magistrate's fees; and

19 (E) in Travis County (Sec. 54.983, Government
20 Code) . . . magistrate's fees;

21 (5) an administrative fee for participation in certain
22 community supervision programs (Sec. 76.015, Government Code)
23 . . . not less than \$25 and not more than \$60 per month; ~~and~~

24 (6) fee paid on filing a petition for an order of
25 nondisclosure of criminal history record information in certain
26 deferred adjudication cases (Sec. 411.081(f-1) [~~411.081~~],
27 Government Code) . . . \$28; and

1 (7) fee paid on filing a petition for an order of
2 nondisclosure of criminal history record information in certain
3 fine-only misdemeanor cases (Sec. 411.081(f-1), Government Code)
4 . . . \$28.

5 SECTION 9. Section 411.081, Government Code, is amended by
6 adding Subsections (d-1), (d-2), (e-1), (h-1), and (h-2) and
7 amending Subsections (f), (f-1), and (h) to read as follows:

8 (d-1) Notwithstanding any other provision of this chapter
9 and subject to Subsection (e-1), a person who is convicted of and
10 has satisfied the judgment for or who has received a dismissal after
11 deferral of disposition for a fine-only misdemeanor, other than a
12 traffic offense or an offense under a municipal ordinance or county
13 order, may petition the court that convicted or granted a dismissal
14 to the person for an order of nondisclosure under this subsection.
15 After notice to the state, the court shall hold a hearing on whether
16 the person is entitled to file the petition and whether issuance of
17 the order is in the best interest of justice. In determining
18 whether granting the order is in the best interest of justice, the
19 court may consider any factors the court considers relevant. If the
20 court determines that granting the order is in the best interest of
21 justice, the court shall issue an order prohibiting criminal
22 justice agencies from disclosing to the public criminal history
23 record information related to the fine-only misdemeanor offense
24 that is the subject of the petition. As a condition of granting the
25 petition under this subsection for a person convicted of the
26 offense, a court may require the defendant to perform community
27 service, pay a fee, or both perform the community service and pay

1 the fee as if the defendant had been placed on probation pending
2 deferred disposition under Article 45.051, Code of Criminal
3 Procedure. A criminal justice agency may disclose criminal history
4 record information that is the subject of an order of nondisclosure
5 under this subsection only to other criminal justice agencies for
6 criminal justice or regulatory licensing purposes, an agency or
7 entity listed in Subsection (i), or the person who is the subject of
8 the order. A person may petition the court for an order of
9 nondisclosure under this subsection only on or after the first
10 anniversary of the conviction or dismissal, as applicable.

11 (d-2) A person eligible for an order of nondisclosure under
12 Subsection (d-1) who is also eligible for an order of expunction
13 under Chapter 55, Code of Criminal Procedure, for that offense may
14 petition under either provision or both, as appropriate.

15 (e-1) A person is not entitled to petition the court under
16 Subsection (d-1) if the person has been previously convicted of or
17 placed on deferred adjudication for any offense other than an
18 offense under the Transportation Code punishable by fine only,
19 regardless of whether that offense is subject to an order of
20 nondisclosure of criminal history record information granted under
21 this section or any other law.

22 (f) For purposes of Subsections [~~Subsection~~] (d), (e), and
23 (e-1), a person is considered to have been placed on deferred
24 adjudication community supervision if, regardless of the statutory
25 authorization:

26 (1) the person entered a plea of guilty or nolo
27 contendere;

1 (2) the judge deferred further proceedings without
2 entering an adjudication of guilt and placed the person under the
3 supervision of the court or an officer under the supervision of the
4 court; and

5 (3) at the end of the period of supervision, the judge
6 dismissed the proceedings and discharged the person.

7 (f-1) A person who petitions the court for an order of
8 nondisclosure under Subsection (d) or (d-1) may file the petition
9 in person, electronically, or by mail. The petition must be
10 accompanied by payment of a \$28 fee to the clerk of the court in
11 addition to any other fee that generally applies to the filing of a
12 civil petition. The Office of Court Administration of the Texas
13 Judicial System shall prescribe a form for the filing of a petition
14 electronically or by mail. The form must provide for the petition
15 to be accompanied by the required fees and any other supporting
16 material determined necessary by the office of court
17 administration, including evidence that the person is entitled to
18 file the petition. The office of court administration shall make
19 available on its Internet website the electronic application and
20 printable application form. Each county or district clerk's office
21 that maintains an Internet website shall include on that website a
22 link to the electronic application and printable application form
23 available on the office of court administration's Internet website.
24 On receipt of a petition under this subsection, the court shall
25 provide notice to the state and an opportunity for a hearing on
26 whether the person is entitled to file the petition and issuance of
27 the order is in the best interest of justice. The court shall hold a

1 hearing before determining whether to issue an order of
2 nondisclosure, except that a hearing is not required if:

3 (1) the state does not request a hearing on the issue
4 before the 45th day after the date on which the state receives
5 notice under this subsection; and

6 (2) the court determines that:

7 (A) the defendant is entitled to file the
8 petition; and

9 (B) the order is in the best interest of justice.

10 (h) The clerk of a court that collects a fee paid under
11 Subsection (f-1) for a petition filed under Subsection (d) [~~(d)~~]
12 shall remit the fee to the comptroller not later than the last day
13 of the month following the end of the calendar quarter in which the
14 fee is collected, and the comptroller shall deposit the fee in the
15 general revenue fund.

16 (h-1) The clerk of a court that collects a fee paid under
17 Subsection (f-1) for a petition filed under Subsection (d-1) shall
18 deposit the fee to the credit of the general fund of the
19 municipality or county, as applicable.

20 (h-2) The Department of Public Safety shall submit a report
21 to the legislature not later than December 1 of each even-numbered
22 year that includes information on:

23 (1) the number of petitions for nondisclosure and
24 orders of nondisclosure received by the department in each of the
25 previous two years;

26 (2) the actions taken by the department with respect
27 to the petitions and orders received;

1 (3) the costs incurred by the department in taking
2 those actions; and

3 (4) the number of persons who are the subject of an
4 order of nondisclosure and who became the subject of criminal
5 charges for an offense committed after the order was issued.

6 SECTION 10. Section 411.081(i), Government Code, as amended
7 by Chapters 42 (S.B. 966), 266 (H.B. 729), and 583 (S.B. 869), Acts
8 of the 83rd Legislature, Regular Session, 2013, is reenacted and
9 amended to read as follows:

10 (i) A criminal justice agency may disclose criminal history
11 record information that is the subject of an order of nondisclosure
12 under this section [~~Subsection (d)~~] to the following noncriminal
13 justice agencies or entities only:

- 14 (1) the State Board for Educator Certification;
- 15 (2) a school district, charter school, private school,
16 regional education service center, commercial transportation
17 company, or education shared service arrangement;
- 18 (3) the Texas Medical Board;
- 19 (4) the Texas School for the Blind and Visually
20 Impaired;
- 21 (5) the Board of Law Examiners;
- 22 (6) the State Bar of Texas;
- 23 (7) a district court regarding a petition for name
24 change under Subchapter B, Chapter 45, Family Code;
- 25 (8) the Texas School for the Deaf;
- 26 (9) the Department of Family and Protective Services;
- 27 (10) the Texas Juvenile Justice Department;

- 1 (11) the Department of Assistive and Rehabilitative
2 Services;
- 3 (12) the Department of State Health Services, a local
4 mental health service, a local intellectual and developmental
5 disability [~~mental retardation~~] authority, or a community center
6 providing services to persons with mental illness or intellectual
7 or developmental disabilities [~~retardation~~];
- 8 (13) the Texas Private Security Board;
- 9 (14) a municipal or volunteer fire department;
- 10 (15) the Texas Board of Nursing;
- 11 (16) a safe house providing shelter to children in
12 harmful situations;
- 13 (17) a public or nonprofit hospital or hospital
14 district, or a facility as defined by Section 250.001, Health and
15 Safety Code;
- 16 (18) the securities commissioner, the banking
17 commissioner, the savings and mortgage lending commissioner, the
18 consumer credit commissioner, or the credit union commissioner;
- 19 (19) the Texas State Board of Public Accountancy;
- 20 (20) the Texas Department of Licensing and Regulation;
- 21 (21) the Health and Human Services Commission;
- 22 (22) the Department of Aging and Disability Services;
- 23 (23) the Texas Education Agency;
- 24 (24) the Judicial Branch Certification Commission;
- 25 (25) a county clerk's office in relation to a
26 proceeding for the appointment of a guardian under Title 3, Estates
27 Code [~~Chapter XIII, Texas Probate Code~~];

1 (26) the Department of Information Resources but only
2 regarding an employee, applicant for employment, contractor,
3 subcontractor, intern, or volunteer who provides network security
4 services under Chapter 2059 to:

5 (A) the Department of Information Resources; or

6 (B) a contractor or subcontractor of the
7 Department of Information Resources;

8 (27) the Texas Department of Insurance;

9 (28) the Teacher Retirement System of Texas; and

10 (29) [~~30~~] the Texas State Board of Pharmacy.

11 SECTION 11. Section 411.0851(a), Government Code, is
12 amended to read as follows:

13 (a) A private entity that compiles and disseminates for
14 compensation criminal history record information shall destroy and
15 may not disseminate any information in the possession of the entity
16 with respect to which the entity has received notice that:

17 (1) an order of expunction has been issued under
18 Article 55.02, Code of Criminal Procedure; or

19 (2) an order of nondisclosure has been issued under
20 Section 411.081 [~~411.081(a)~~].

21 SECTION 12. The heading to Section 552.142, Government
22 Code, is amended to read as follows:

23 Sec. 552.142. EXCEPTION: CONFIDENTIALITY OF RECORDS OF
24 CERTAIN CRIMINAL HISTORY INFORMATION [~~DEFERRED ADJUDICATIONS~~].

25 SECTION 13. Section 552.142(a), Government Code, is amended
26 to read as follows:

27 (a) Information is excepted from the requirements of

1 Section 552.021 if an order of nondisclosure with respect to the
2 information has been issued under Section 411.081 [~~411.081(d)~~].

3 SECTION 14. Section 552.1425(a), Government Code, is
4 amended to read as follows:

5 (a) A private entity that compiles and disseminates for
6 compensation criminal history record information may not compile or
7 disseminate information with respect to which the entity has
8 received notice that:

9 (1) an order of expunction has been issued under
10 Article 55.02, Code of Criminal Procedure; or

11 (2) an order of nondisclosure has been issued under
12 Section 411.081 [~~411.081(d)~~].

13 SECTION 15. Section 53.021(e), Occupations Code, is amended
14 to read as follows:

15 (e) Subsection (c) does not apply if the person is an
16 applicant for or the holder of a license that authorizes the person
17 to provide:

18 (1) law enforcement or public health, education, or
19 safety services; or

20 (2) financial services in an industry regulated by a
21 person listed in Section 411.081(i)(18) [~~411.081(i)(19)~~],
22 Government Code.

23 SECTION 16. Section 15, Article 42.12, Code of Criminal
24 Procedure, is amended by adding Subsections (l), (m), and (n) to
25 read as follows:

26 (l) On written motion of a defendant after completion of
27 two-thirds of the original community supervision period for a state

1 jail felony with respect to which written consent was obtained
2 under Section 12.44(c), Penal Code, the judge may review the
3 defendant's record and consider whether to amend the record of
4 conviction to reflect a conviction for a Class A misdemeanor in lieu
5 of a state jail felony. On disposition of the community supervision
6 in a manner provided by Section 20, the judge, on discharge of the
7 defendant, may amend the record of conviction to reflect a
8 conviction for a Class A misdemeanor in lieu of a state jail felony,
9 subject to Subsection (m), if:

10 (1) the offense for which the defendant was placed on
11 community supervision was not an offense:

12 (A) under Section 30.02, Section 30.04, Section
13 39.04(a)(2), Section 49.045, or Title 5, Penal Code;

14 (B) under Article 62.102; or

15 (C) involving family violence, as defined by
16 Section 71.004, Family Code;

17 (2) the defendant has fulfilled to the judge's
18 satisfaction all the conditions of community supervision,
19 including the payment of all required restitution, and is not
20 delinquent on the payment of any fines, costs, and fees that the
21 defendant has the ability to pay;

22 (3) the defendant files with the written motion a
23 statement that:

24 (A) contains a summary of the defendant's
25 performance during community supervision, including compliance
26 with the conditions of community supervision; and

27 (B) asserts that the defendant meets the

1 conditions for an amendment of the record of conviction under this
2 subsection;

3 (4) the defendant provides a copy of the motion and
4 statement to the attorney representing the state; and

5 (5) at the hearing held on the motion, the judge finds
6 that an amendment of the record of conviction is in the best
7 interest of justice.

8 (m) A judge who amends a record of conviction under
9 Subsection (l) may not modify the name of the state jail felony
10 offense for which the judge placed the defendant on community
11 supervision. A defendant whose record of conviction is amended
12 under Subsection (l) is not considered to have been convicted of a
13 felony with respect to the modified offense.

14 (n) A record of conviction that is amended under Subsection
15 (l) supersedes and takes the place of the record of conviction as it
16 existed on the original date of conviction. A judge retains
17 jurisdiction for the purposes of Subsection (l) only until the
18 expiration of the term of community supervision.

19 SECTION 17. Section 12.44, Penal Code, is amended by adding
20 Subsection (c) to read as follows:

21 (c) With the written consent of the prosecuting attorney
22 prior to sentencing, the court may amend the record of conviction to
23 reflect a conviction for a Class A misdemeanor in lieu of a state
24 jail felony as provided by Section 15(1), Article 42.12, Code of
25 Criminal Procedure.

26 SECTION 18. This Act applies to an expunction of records and
27 files relating to any criminal offense that occurred before, on, or

1 after the effective date of this Act.

2 SECTION 19. This Act applies to a petition for an order of
3 nondisclosure that is filed on or after the effective date of this
4 Act, regardless of whether the misdemeanor that is the subject of
5 the petition occurred before, on, or after the effective date of
6 this Act.

7 SECTION 20. The changes in law made by this Act in amending
8 Section 15, Article 42.12, Code of Criminal Procedure, and adding
9 Section 12.44(c), Penal Code, apply only to a defendant who is
10 placed on community supervision for an offense committed on or
11 after the effective date of this Act. A defendant who is placed on
12 community supervision for an offense committed before the effective
13 date of this Act is governed by the law in effect on the date the
14 offense was committed, and the former law is continued in effect for
15 that purpose. For purposes of this section, an offense was
16 committed before the effective date of this Act if any element of
17 the offense occurred before that date.

18 SECTION 21. This Act takes effect September 1, 2015.

ADOPTED

MAY 27 2015

By: Jose Rodriguez

Atty. Gen.
Secretary of the Senate

H.B. No. 3579

Substitute the following for H.B. No. 3579:

By: John Whitman

C.S. H.B. No. 3579

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AN ACT

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authorizing a fee.

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~~
12 ~~with the commission of any felony offense arising out of the~~
13 ~~same 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 180 days have elapsed
17 from the date of arrest if the offense [~~arrest~~] for which the
18 expunction was sought was [~~for an offense~~] punishable as a Class
19 C misdemeanor and if there was no felony charge arising out of
20 the same transaction for which the person was arrested;

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

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

9 (ii) if presented at any time following the
10 person's arrest, was dismissed or quashed, and the court finds
11 that the indictment or information was dismissed or quashed
12 because the person completed a pretrial intervention program
13 authorized under Section 76.011, Government Code, because the
14 presentment had been made because of mistake, false information,
15 or other similar reason indicating absence of probable cause at
16 the time of the dismissal to believe the person committed the
17 offense, or because the indictment or information was void; or

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

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

25 (a-2) Notwithstanding any other provision of this article,
26 a person who intentionally or knowingly absconds from the
27 jurisdiction after being released under Chapter 17 following an

1 arrest is not eligible under Subsection (a)(2)(A)(i)(a), (b), or
2 (c) or Subsection (a)(2)(B) for an expunction of the records and
3 files relating to that arrest and to the proceedings conducted
4 under Chapter 17.

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

10 (1) the person is:

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

13 (B) convicted of the offense; and

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

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

23 (c) A court may not order the expunction of records and
24 files relating to [~~an arrest for~~] an offense for which a person
25 is subsequently acquitted, whether by the trial court, a court
26 of appeals, or the court of criminal appeals, if the offense for
27 which the person was acquitted arose out of a criminal episode,

1 as defined by Section 3.01, Penal Code, and the person was
2 convicted of or remains subject to prosecution for at least one
3 other offense occurring during the criminal episode.

4 (d) A person is entitled to have expunged any information
5 that identifies the person, including the person's name,
6 address, date of birth, driver's license number, and social
7 security number, contained in records and files relating to
8 another person's [the] arrest or to any ensuing criminal
9 proceedings based on that arrest [of another person expunged]
10 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
14 without 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
17 [~~arrest~~] offense records and files of the person arrested is
18 that the information was falsely given by the person arrested as
19 the arrested person's identifying information.

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

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

26 (1) the applicant's full name, sex, race, date of
27 birth, driver's license number, social security number, and

1 address at the time the person who falsely identified himself or
2 herself as the applicant was arrested;

3 (2) the following information regarding the arrest:

4 (A) the date of arrest;

5 (B) the offense charged against the person
6 arrested;

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

9 (D) the name of the arresting agency; and

10 (3) a statement that:

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

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

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

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

27 SECTION 4. Section 4(a-1), Article 55.02, Code of Criminal

1 Procedure, is amended to read as follows:

2 (a-1) The court shall provide in its expunction order that
3 the applicable law enforcement agency and prosecuting attorney
4 may retain the offense [~~arrest~~] records and files of any person
5 who becomes entitled to an expunction of those records and files
6 based on the expiration of a period described by Article
7 55.01(a)(2)(A)(i)(a), (b), or (c), but without the certification
8 of the prosecuting attorney as described by Article
9 55.01(a)(2)(A)(i)(d).

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

12 Art. 55.03. EFFECT OF EXPUNCTION. When the order of
13 expunction is final:

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

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

18 (A) the occurrence of the arrest and any ensuing
19 criminal proceedings based on the arrest; and

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

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

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

27 Sec. 1. A person who, [~~acquires knowledge of an arrest~~]

1 while an officer or employee of the state or of any agency or
2 other entity of the state or any political subdivision of the
3 state, acquires knowledge of an arrest or of criminal
4 proceedings based on that arrest and who knows of an order
5 expunging the records and files relating to the applicable
6 offense [~~that arrest~~] commits an offense if he knowingly
7 releases, disseminates, or otherwise uses the records or files.

8 SECTION 7. Section 109.005(a), Business & Commerce Code,
9 as added by Chapter 1200 (S.B. No. 1289), Acts of the 83rd
10 Legislature, Regular Session, 2013, is amended to read as
11 follows:

12 (a) A business entity may not publish any criminal record
13 information in the business entity's possession with respect to
14 which the business entity has knowledge or has received notice
15 that:

16 (1) an order of expunction has been issued under
17 Article 55.02, Code of Criminal Procedure; or

18 (2) an order of nondisclosure has been issued under
19 Section 411.081 [~~411.081(d)~~], Government Code.

20 SECTION 8. Section 103.0211, Government Code, is amended
21 to read as follows:

22 Sec. 103.0211. ADDITIONAL FEES AND COSTS IN CRIMINAL OR
23 CIVIL CASES: GOVERNMENT CODE. An accused or defendant, or a
24 party to a civil suit, as applicable, shall pay the following
25 fees and costs under the Government Code if ordered by the court
26 or otherwise required:

27 (1) a court reporter fee when testimony is taken:

1 (A) in a criminal court in Dallas County (Sec.
2 25.0593, Government Code) . . . \$3;

3 (B) in a county criminal court of appeals in
4 Dallas County (Sec. 25.0594, Government Code) . . . \$3;

5 (C) in a county court at law in McLennan County
6 (Sec. 25.1572, Government Code) . . . \$3; and

7 (D) in a county criminal court in Tarrant County
8 (Sec. 25.2223, Government Code) . . . \$3;

9 (2) a court reporter service fee if the courts have
10 official court reporters (Sec. 51.601, Government Code) . . .
11 \$15 or, in specified counties, \$30;

12 (3) a speedy trial rights waiver motion filing fee in
13 El Paso County (Sec. 54.745, Government Code) . . . \$100;

14 (4) the costs of a criminal magistrate if the court
15 determines that the nonprevailing party is able to defray the
16 costs:

17 (A) in Bexar County (Sec. 54.913, Government
18 Code) . . . magistrate's fees;

19 (B) in Dallas County (Sec. 54.313, Government
20 Code) . . . magistrate's fees;

21 (C) in Lubbock County (Sec. 54.883, Government
22 Code) . . . magistrate's fees;

23 (D) in Tarrant County (Sec. 54.663, Government
24 Code) . . . magistrate's fees; and

25 (E) in Travis County (Sec. 54.983, Government
26 Code) . . . magistrate's fees;

27 (5) an administrative fee for participation in

1 certain community supervision programs (Sec. 76.015, Government
2 Code) . . . not less than \$25 and not more than \$60 per month;
3 [~~and~~]

4 (6) fee paid on filing a petition for an order of
5 nondisclosure of criminal history record information in certain
6 cases (Sec. 411.081(f-1) [~~411.081~~], Government Code) . . . \$28.

7 SECTION 9. Section 411.081, Government Code, is amended by
8 adding Subsections (d-1), (e-1), (h-1), and (h-2) and amending
9 Subsections (f), (f-1), and (h) to read as follows:

10 (d-1) Notwithstanding any other provision of this chapter
11 and subject to Subsection (e-1), a person who is convicted of
12 and has satisfied the judgment for or who has received a
13 dismissal after deferral of disposition for a fine-only
14 misdemeanor, other than an offense under the Transportation Code
15 or an offense under a municipal ordinance or county order, may
16 petition the court that convicted or granted a dismissal to the
17 person for an order of nondisclosure under this subsection.
18 After notice to the state, the court shall hold a hearing on
19 whether the person is entitled to file the petition and whether
20 issuance of the order is in the best interest of justice. In
21 determining whether granting the order is in the best interest
22 of justice, the court may consider the person's criminal history
23 record information among any other factors the court considers
24 relevant. If the court determines that granting the order is in
25 the best interest of justice, the court shall issue an order
26 prohibiting criminal justice agencies from disclosing to the
27 public criminal history record information related to the fine-

1 only misdemeanor offense that is the subject of the petition.
2 As a condition of granting the petition under this subsection
3 for a person convicted of the offense, a court may require the
4 defendant to perform community service, pay a fee, or both
5 perform the community service and pay the fee as if the
6 defendant had been placed on probation pending deferred
7 disposition under Article 45.051, Code of Criminal Procedure. A
8 criminal justice agency may disclose criminal history record
9 information that is the subject of an order of nondisclosure
10 under this subsection only to other criminal justice agencies
11 for criminal justice or regulatory licensing purposes, an agency
12 or entity listed in Subsection (i), or the person who is the
13 subject of the order. A person may petition the court for an
14 order of nondisclosure under this subsection only on or after
15 the first anniversary of the conviction or dismissal, as
16 applicable.

17 (e-1) A person is not entitled to petition the court under
18 Subsection (d-1) if the person has been previously convicted of
19 or placed on deferred adjudication for any offense other than an
20 offense under the Transportation Code punishable by fine only,
21 regardless of whether that offense is subject to an order of
22 nondisclosure of criminal history record information granted
23 under this section or any other law.

24 (f) For purposes of Subsections [Subsection] (d), (e), and
25 (e-1), a person is considered to have been placed on deferred
26 adjudication community supervision if, regardless of the
27 statutory authorization:

1 (1) the person entered a plea of guilty or nolo
2 contendere;

3 (2) the judge deferred further proceedings without
4 entering an adjudication of guilt and placed the person under
5 the supervision of the court or an officer under the supervision
6 of the court; and

7 (3) at the end of the period of supervision, the
8 judge dismissed the proceedings and discharged the person.

9 (f-1) A person who petitions the court for an order of
10 nondisclosure under Subsection (d) or (d-1) may file the
11 petition in person, electronically, or by mail. The petition
12 must be accompanied by payment of a \$28 fee to the clerk of the
13 court in addition to any other fee that generally applies to the
14 filing of a civil petition. The Office of Court Administration
15 of the Texas Judicial System shall prescribe a form for the
16 filing of a petition electronically or by mail. The form must
17 provide for the petition to be accompanied by the required fees
18 and any other supporting material determined necessary by the
19 office of court administration, including evidence that the
20 person is entitled to file the petition. The office of court
21 administration shall make available on its Internet website the
22 electronic application and printable application form. Each
23 county or district clerk's office that maintains an Internet
24 website shall include on that website a link to the electronic
25 application and printable application form available on the
26 office of court administration's Internet website. On receipt
27 of a petition under this subsection, the court shall provide

1 notice to the state and an opportunity for a hearing on whether
2 the person is entitled to file the petition and issuance of the
3 order is in the best interest of justice. The court shall hold
4 a hearing before determining whether to issue an order of
5 nondisclosure, except that a hearing is not required if:

6 (1) the state does not request a hearing on the issue
7 before the 45th day after the date on which the state receives
8 notice under this subsection; and

9 (2) the court determines that:

10 (A) the defendant is entitled to file the
11 petition; and

12 (B) the order is in the best interest of
13 justice.

14 (h) The clerk of a court that collects a fee paid under
15 Subsection (f-1) for a petition filed under Subsection (d) [~~(d)~~]
16 shall remit the fee to the comptroller not later than the last
17 day of the month following the end of the calendar quarter in
18 which the fee is collected, and the comptroller shall deposit
19 the fee in the general revenue fund.

20 (h-1) The clerk of a court that collects a fee paid under
21 Subsection (f-1) for a petition filed under Subsection (d-1)
22 shall deposit the fee to the credit of the general fund of the
23 municipality or county, as applicable.

24 (h-2) The Department of Public Safety shall submit a
25 report to the legislature not later than December 1 of each
26 even-numbered year that includes information on:

27 (1) the number of petitions for nondisclosure and

1 orders of nondisclosure received by the department in each of
2 the previous two years;

3 (2) the actions taken by the department with respect
4 to the petitions and orders received;

5 (3) the costs incurred by the department in taking
6 those actions; and

7 (4) the number of persons who are the subject of an
8 order of nondisclosure and who became the subject of criminal
9 charges for an offense committed after the order was issued.

10 SECTION 10. Section 411.081(i), Government Code, as
11 amended by Chapters 42 (S.B. 966), 266 (H.B. 729), and 583 (S.B.
12 869), Acts of the 83rd Legislature, Regular Session, 2013, is
13 reenacted and amended to read as follows:

14 (i) A criminal justice agency may disclose criminal
15 history record information that is the subject of an order of
16 nondisclosure under this section [~~Subsection (d)~~] to the
17 following noncriminal justice agencies or entities only:

18 (1) the State Board for Educator Certification;

19 (2) a school district, charter school, private
20 school, regional education service center, commercial
21 transportation company, or education shared service arrangement;

22 (3) the Texas Medical Board;

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

25 (5) the Board of Law Examiners;

26 (6) the State Bar of Texas;

27 (7) a district court regarding a petition for name

1 change under Subchapter B, Chapter 45, Family Code;

2 (8) the Texas School for the Deaf;

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

4 (10) the Texas Juvenile Justice Department;

5 (11) the Department of Assistive and Rehabilitative

6 Services;

7 (12) the Department of State Health Services, a local

8 mental health service, a local intellectual and developmental

9 disability [~~mental retardation~~] authority, or a community center

10 providing services to persons with mental illness or

11 intellectual or developmental disabilities [~~retardation~~];

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 as defined by Section 250.001, Health

19 and Safety Code;

20 (18) the securities commissioner, the banking

21 commissioner, the savings and mortgage lending commissioner, the

22 consumer credit commissioner, or the credit union commissioner;

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

24 (20) the Texas Department of Licensing and

25 Regulation;

26 (21) the Health and Human Services Commission;

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

- 1 (23) the Texas Education Agency;
- 2 (24) the Judicial Branch Certification Commission;
- 3 (25) a county clerk's office in relation to a
4 proceeding for the appointment of a guardian under Title 3,
5 Estates Code [~~Chapter XIII, Texas Probate Code~~];
- 6 (26) the Department of Information Resources but only
7 regarding an employee, applicant for employment, contractor,
8 subcontractor, intern, or volunteer who provides network
9 security services under Chapter 2059 to:
- 10 (A) the Department of Information Resources; or
11 (B) a contractor or subcontractor of the
12 Department of Information Resources;
- 13 (27) the Texas Department of Insurance;
- 14 (28) the Teacher Retirement System of Texas; and
15 (29) [~~(30)~~] the Texas State Board of Pharmacy.

16 SECTION 11. Section 411.0851(a), Government Code, is
17 amended to read as follows:

18 (a) A private entity that compiles and disseminates for
19 compensation criminal history record information shall destroy
20 and may not disseminate any information in the possession of the
21 entity with respect to which the entity has received notice
22 that:

23 (1) an order of expunction has been issued under
24 Article 55.02, Code of Criminal Procedure; or

25 (2) an order of nondisclosure has been issued under
26 Section 411.081 [~~411.081(d)~~].

27 SECTION 12. The heading to Section 552.142, Government

1 Code, is amended to read as follows:

2 Sec. 552.142. EXCEPTION: CONFIDENTIALITY OF RECORDS OF
3 CERTAIN CRIMINAL HISTORY INFORMATION [~~DEFERRED ADJUDICATIONS~~].

4 SECTION 13. Section 552.142(a), Government Code, is
5 amended to read as follows:

6 (a) Information is excepted from the requirements of
7 Section 552.021 if an order of nondisclosure with respect to the
8 information has been issued under Section 411.081 [~~411.081(d)~~].

9 SECTION 14. Section 552.1425(a), Government Code, is
10 amended to read as follows:

11 (a) A private entity that compiles and disseminates for
12 compensation criminal history record information may not compile
13 or disseminate information with respect to which the entity has
14 received notice that:

15 (1) an order of expunction has been issued under
16 Article 55.02, Code of Criminal Procedure; or

17 (2) an order of nondisclosure has been issued under
18 Section 411.081 [~~411.081(d)~~].

19 SECTION 15. Section 53.021(e), Occupations Code, is
20 amended to read as follows:

21 (e) Subsection (c) does not apply if the person is an
22 applicant for or the holder of a license that authorizes the
23 person to provide:

24 (1) law enforcement or public health, education, or
25 safety services; or

26 (2) financial services in an industry regulated by a
27 person listed in Section 411.081(i)(18) [~~411.081(i)(19)~~],

1 Government Code.

2 SECTION 16. Section 15, Article 42.12, Code of Criminal
3 Procedure, is amended by adding Subsections (l), (m), and (n) to
4 read as follows:

5 (l) On written motion of a defendant after completion of
6 two-thirds of the original community supervision period for a
7 state jail felony with respect to which written consent was
8 obtained under Section 12.44(c), Penal Code, the judge may
9 review the defendant's record and consider whether to amend the
10 record of conviction to reflect a conviction for a Class A
11 misdemeanor in lieu of a state jail felony. On disposition of
12 the community supervision in a manner provided by Section 20,
13 the judge, on discharge of the defendant, may amend the record
14 of conviction to reflect a conviction for a Class A misdemeanor
15 in lieu of a state jail felony, subject to Subsection (m), if:

16 (1) the offense for which the defendant was placed on
17 community supervision was not an offense:

18 (A) under Section 30.02, Section 30.04, Section
19 39.04(a)(2), Section 49.045, or Title 5, Penal Code;

20 (B) under Article 62.102; or

21 (C) involving family violence, as defined by
22 Section 71.004, Family Code;

23 (2) the defendant has fulfilled to the judge's
24 satisfaction all the conditions of community supervision,
25 including the payment of all required restitution, and is not
26 delinquent on the payment of any fines, costs, and fees that the
27 defendant has the ability to pay;

1 (3) the defendant files with the written motion a
2 statement that:

3 (A) contains a summary of the defendant's
4 performance during community supervision, including compliance
5 with the conditions of community supervision; and

6 (B) asserts that the defendant meets the
7 conditions for an amendment of the record of conviction under
8 this subsection;

9 (4) the defendant provides a copy of the motion and
10 statement to the attorney representing the state; and

11 (5) at the hearing held on the motion, the judge
12 finds that an amendment of the record of conviction is in the
13 best interest of justice.

14 (m) A judge who amends a record of conviction under
15 Subsection (1) may not modify the name of the state jail felony
16 offense for which the judge placed the defendant on community
17 supervision. A defendant whose record of conviction is amended
18 under Subsection (1) is not considered to have been convicted of
19 a felony with respect to the modified offense.

20 (n) A record of conviction that is amended under
21 Subsection (1) supersedes and takes the place of the record of
22 conviction as it existed on the original date of conviction. A
23 judge retains jurisdiction for the purposes of Subsection (1)
24 only until the expiration of the term of community supervision.

25 SECTION 17. Section 12.44, Penal Code, is amended by
26 adding Subsection (c) to read as follows:

27 (c) With the written consent of the prosecuting attorney

1 prior to sentencing, the court may amend the record of
2 conviction to reflect a conviction for a Class A misdemeanor in
3 lieu of a state jail felony as provided by Section 15(1),
4 Article 42.12, Code of Criminal Procedure.

5 SECTION 18. This Act applies to an expunction of records
6 and files relating to any criminal offense that occurred before,
7 on, or after the effective date of this Act.

8 SECTION 19. This Act applies to a petition for an order of
9 nondisclosure that is filed on or after the effective date of
10 this Act, regardless of whether the misdemeanor that is the
11 subject of the petition occurred before, on, or after the
12 effective date of this Act.

13 SECTION 20. The changes in law made by this Act in
14 amending Section 15, Article 42.12, Code of Criminal Procedure,
15 and adding Section 12.44(c), Penal Code, apply only to a
16 defendant who is placed on community supervision for an offense
17 committed on or after the effective date of this Act. A
18 defendant who is placed on community supervision for an offense
19 committed before the effective date of this Act is governed by
20 the law in effect on the date the offense was committed, and the
21 former law is continued in effect for that purpose. For
22 purposes of this section, an offense was committed before the
23 effective date of this Act if any element of the offense
24 occurred before that date.

25 SECTION 21. This Act takes effect September 1, 2015.

ADOPTED

MAY 27 2015

Leta Drew
Secretary of the Senate

Chris Farn

FLOOR AMENDMENT NO. 1

BY: _____

1 Amend C.S.H.B. No. 3579 (senate committee printing) as
2 follows:

3 (1) Designate SECTIONS 1 through 6 of the bill (page 1, line
4 22, through page 4, line 8) and SECTIONS 16 and 17 of the bill (page
5 7, line 58, through page 8, line 45) as ARTICLE 1 of the bill and
6 renumber those SECTIONS appropriately.

7 (2) Designate SECTIONS 7 through 15 of the bill (page 4,
8 line 9, through page 7, line 57) as ARTICLE 2 of the bill and
9 renumber those SECTIONS appropriately.

10 (3) Add the following appropriately numbered SECTION to the
11 end of ARTICLE 2 of the bill:

12 SECTION 2.____. This article takes effect only if S.B. 1902,
13 Acts of the 84th Legislature, Regular Session, 2015, does not
14 become law. If that bill becomes law, this article has no effect.

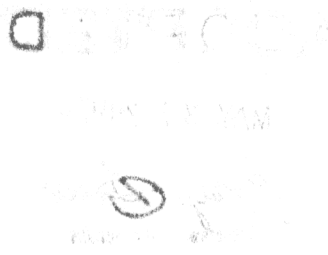
15 (4) After added ARTICLE 2 of the bill, add a new ARTICLE 3 of
16 the bill to read as follows:

ARTICLE 3

17 SECTION 3.01. Subchapter E-1, Chapter 411, Government Code,
18 as effective September 1, 2015, is amended by adding Section
19 411.0729 to read as follows:
20

21 Sec. 411.0729. PROCEDURE FOR CERTAIN FINE-ONLY
22 MISDEMEANORS. (a) This section applies only to a person who is
23 convicted of and has satisfied the judgment for or who has received
24 a dismissal after deferral of disposition for a fine-only
25 misdemeanor, other than an offense under the Transportation Code or
26 an offense under a municipal ordinance or county order.

27 (b) Notwithstanding any other provision of this chapter or
28 Subchapter F, a person described by Subsection (a) may petition the
29 court that convicted or granted a dismissal to the person for an



1 order of nondisclosure of criminal history record information under
2 this section if the person:

- 3 (1) satisfies the requirements of Section 411.074; and
- 4 (2) has never been previously convicted of or placed
5 on deferred adjudication community supervision for another offense
6 other than an offense under the Transportation Code that is
7 punishable by fine only, regardless of whether that offense is
8 subject to an order of nondisclosure of criminal history record
9 information granted under this subchapter or any other law.

10 (c) After notice to the state, the court shall hold a
11 hearing on whether the person is entitled to file the petition and
12 whether issuance of the order is in the best interest of justice.
13 In determining whether granting the order is in the best interest of
14 justice, the court may consider the person's criminal history
15 record information among any other factors the court considers
16 relevant. If the court determines that granting the order is in the
17 best interest of justice, the court shall issue an order
18 prohibiting criminal justice agencies from disclosing to the public
19 criminal history record information related to the fine-only
20 misdemeanor offense that is the subject of the petition. As a
21 condition of granting the petition under this section for a person
22 convicted of the offense, a court may require the person to perform
23 community service, pay a fee, or both perform the community service
24 and pay the fee as if the person had been placed on probation
25 pending deferred disposition under Article 45.051, Code of Criminal
26 Procedure.

27 (d) A person may petition the court for an order of
28 nondisclosure of criminal history record information under this
29 section only on or after the first anniversary of the conviction or
30 dismissal, as applicable.

31 SECTION 3.02. Section 411.077, Government Code, as

1 effective September 1, 2015, is amended by adding Subsection (a-1)
2 to read as follows:

3 (a-1) The clerk of a court that collects a fee paid under
4 Section 411.0745 for a petition filed under Section 411.0729 shall
5 deposit the fee to the credit of the general fund of the
6 municipality or county, as applicable.

7 SECTION 3.03. This article takes effect only if S.B. 1902,
8 Acts of the 84th Legislature, Regular Session, 2015, becomes law.
9 If that bill does not become law, this article has no effect.

10 (5) Designate SECTIONS 18 through 21 of the bill (page 8,
11 lines 46-65) as ARTICLE 4 of the bill and renumber those SECTIONS
12 appropriately.

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 28, 2015

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3579 by Alonzo (Relating to certain criminal history record information; authorizing a fee.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3579, As Passed 2nd House: an impact of \$0 through the biennium ending August 31, 2017.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	\$0
2017	\$0
2018	\$0
2019	\$0
2020	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>Statewide Electronic Filing System</i> 5157	Probable Savings/(Cost) from <i>Judicial Fund</i> 573
2016	\$165,150	\$99,090
2017	\$165,150	\$99,090
2018	\$165,150	\$99,090
2019	\$165,150	\$99,090
2020	\$165,150	\$99,090

Fiscal Analysis

The bill would amend the Code of Criminal Procedure to expand the situations in which a person can obtain an order of nondisclosure to include certain fine-only misdemeanor cases. This would apply to fine-only misdemeanor cases other than offenses under the Transportation Code and offenses under a municipal ordinance or county order. A person that has been convicted of one of

these relevant fine-only offenses may petition for an order of nondisclosure if the person has satisfied the judgment. Also, a person that has been placed on deferred disposition may petition for an order of nondisclosure if the person has received a dismissal. The petition may be made after the first anniversary of the conviction or dismissal.

The bill would provide that eligible persons seeking to obtain an order of nondisclosure must file a petition accompanied by regular civil filing fees plus a special \$28 filing fee that is deposited to the credit of the general fund of the municipality or county, as applicable. The petition would be filed with the court that convicted the defendant or placed the defendant on deferred disposition.

The bill would take effect September 1, 2015.

Methodology

The Office of Court Administration (OCA) anticipates that the bill would expand the pool of persons eligible to file a petition for an order of nondisclosure and would result in additional filing fee revenue to the State. The bill would primarily impact courts that hear fine-only misdemeanors, or justice and municipal courts. There are no civil filing fees in municipal courts and so the only fee that would be charged on these orders of nondisclosure would be \$28 for filing a petition for an order of nondisclosure. This fee revenue does not go to the state.

Each civil petition for an order of nondisclosure filed in a justice court would generate revenue directed to the State through two fees. First, a \$10.00 fee to support statewide e-filing that would be credited to the General Revenue Dedicated Statewide Electronic Filing System Account No. 5157 and, second, a \$6.00 fee to support basic civil legal services to the indigent that would be credited to the Judicial Fund. In total, \$16 in additional civil filing fee revenue would be generated for each newly-filed petition for an order of nondisclosure.

In fiscal year 2014, there were 194,598 convictions in justice courts that did not involve violations of traffic laws or county orders and ordinances and 34,137 deferred dispositions in the same types of cases in justice courts. OCA estimates that 75 percent of defendants placed on deferred disposition successfully complete the terms of deferred disposition and have their cases dismissed. Therefore, 25,632 persons placed in deferred disposition in justice courts would be eligible to petition for an order of nondisclosure (34,137 x 75 percent).

Based on this information, there would be 220,230 people eligible to file petitions for orders of nondisclosure (194,598 + 25,632). OCA estimates that 10 percent of persons eligible to file petitions for orders of nondisclosure would do so, or an estimated 22,023 persons. Furthermore, OCA estimates that 75 percent of those eligible to file petitions for orders of nondisclosure, and that would do so, would pay filing fees, or 16,515 persons, with the remaining 25 percent claiming indigency and not paying filing fees.

In justice courts, 16,515 new cases multiplied by the \$10 fee for statewide e-filing would yield \$165,150 each year to the General Revenue Dedicated Statewide Electronic Filing System Account No. 5157 and multiplied by the \$6 fee for basic civil legal services for indigents would yield \$99,090 to the Judicial Fund. This analysis assumes cases and revenues would continue in a like manner each year through fiscal year 2020.

Local Government Impact

The Office of Court Administration estimates that there will be a significant positive fiscal impact

to counties and cities. In cities, there will be a \$28 fee collected for an estimated 32,581 cases which would result in \$912,268 in revenue. In counties, there will be a \$28 fee collected for an estimated 16,515 cases which would result in \$462,420 in new revenue.

Also, there is a \$25 basic filing fee in justice courts which stays with the county. Based on the assumption 16,515 cases would be filed, this would result in \$412,875 in new revenue.

Additionally, in some counties, a filing fee of up to \$5 is assessed in justice courts to support alternative dispute resolution programs. In such counties, this would translate into additional revenue.

Source Agencies: 405 Department of Public Safety, 212 Office of Court Administration,
Texas Judicial Council

LBB Staff: UP, KJo, MW, GDz

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 23, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3579 by Alonzo (relating to certain criminal history record information; authorizing a fee.), **Committee Report 2nd House, Substituted**

Estimated Two-year Net Impact to General Revenue Related Funds for HB3579, Committee Report 2nd House, Substituted: an impact of \$0 through the biennium ending August 31, 2017.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	\$0
2017	\$0
2018	\$0
2019	\$0
2020	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>Statewide Electronic Filing System</i> 5157	Probable Savings/(Cost) from <i>Judicial Fund</i> 573
2016	\$165,150	\$99,090
2017	\$165,150	\$99,090
2018	\$165,150	\$99,090
2019	\$165,150	\$99,090
2020	\$165,150	\$99,090

Fiscal Analysis

The bill would amend the Code of Criminal Procedure expand the situations in which a person can obtain an order of nondisclosure to include certain fine-only misdemeanor cases. This would apply to fine-only misdemeanor cases other than offenses under the Transportation Code and offenses under a municipal ordinance or county order. A person that has been convicted of one of these relevant fine-only offenses may petition for an order of nondisclosure if the person has satisfied the judgment. Also, a person that has been placed on deferred disposition may petition for an order of nondisclosure if the person has received a dismissal. The petition may be made

after the first anniversary of the conviction or dismissal.

The bill would provide that eligible persons seeking to obtain an order of nondisclosure must file a petition accompanied by regular civil filing fees plus a special \$28 filing fee that is deposited to the credit of the general fund of the municipality or county, as applicable. The petition would be filed with the court that convicted the defendant or placed the defendant on deferred disposition.

The bill would take effect September 1, 2015.

Methodology

The Office of Court Administration (OCA) anticipates that the bill would expand the pool of persons eligible to file a petition for an order of nondisclosure and would result in additional filing fee revenue to the State. The bill would primarily impact courts that hear fine-only misdemeanors, or justice and municipal courts. There are no civil filing fees in municipal courts and so the only fee that would be charged on these orders of nondisclosure would be \$28 for filing a petition for an order of nondisclosure. This fee revenue does not go to the state.

Each civil petition for an order of nondisclosure filed in a justice court would generate revenue directed to the State through two fees. First, a \$10.00 fee to support statewide e-filing that would be credited to the General Revenue Dedicated Statewide Electronic Filing System Account No. 5157 and, second, a \$6.00 fee to support basic civil legal services to the indigent that would be credited to the Judicial Fund. In total, \$16 in additional civil filing fee revenue would be generated for each newly-filed petition for an order of nondisclosure.

In fiscal year 2014, there were 194,598 convictions in justice courts that did not involve violations of traffic laws or county orders and ordinances and 34,137 deferred dispositions in the same types of cases in justice courts. OCA estimates that 75 percent of defendants placed on deferred disposition successfully complete the terms of deferred disposition and have their cases dismissed. Therefore, 25,632 persons placed in deferred disposition in justice courts would be eligible to petition for an order of nondisclosure ($34,137 \times 75$ percent).

Based on this information, there would be 220,230 people eligible to file petitions for orders of nondisclosure ($194,598 + 25,632$). OCA estimates that 10 percent of persons eligible to file petitions for orders of nondisclosure would do so, or an estimated 22,023 persons. Furthermore, OCA estimates that 75 percent of those eligible to file petitions for orders of nondisclosure, and that would do so, would pay filing fees, or 16,515 persons, with the remaining 25 percent claiming indigency and not paying filing fees.

In justice courts, 16,515 new cases multiplied by the \$10 fee for statewide e-filing would yield \$165,150 each year to the General Revenue Dedicated Statewide Electronic Filing System Account No. 5157 and multiplied by the \$6 fee for basic civil legal services for indigents would yield \$99,090 to the Judicial Fund. This analysis assumes cases and revenues would continue in a like manner each year through fiscal year 2020.

Local Government Impact

The Office of Court Administration estimates that there will be a significant positive fiscal impact to counties and cities. In cities, there will be a \$28 fee collected for an estimated 32,581 cases which would result in \$912,268 in revenue. In counties, there will be a \$28 fee collected for an estimated 16,515 cases which would result in \$462,420 in new revenue.

Also, there is a \$25 basic filing fee in justice courts which stays with the county. Based on the assumption 16,515 cases would be filed, this would result in \$412,875 in new revenue. Additionally, in some counties, a filing fee of up to \$5 is assessed in justice courts to support alternative dispute resolution programs. In such counties, this would translate into additional revenue.

Source Agencies: 405 Department of Public Safety, 212 Office of Court Administration,
Texas Judicial Council

LBB Staff: UP, KJo, MW, GDz

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

May 22, 2015

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB3579 by Alonzo (Relating to certain criminal record information; authorizing a fee.),
As Engrossed

Estimated Two-year Net Impact to General Revenue Related Funds for HB3579, As Engrossed: an impact of \$0 through the biennium ending August 31, 2017.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2016	\$0
2017	\$0
2018	\$0
2019	\$0
2020	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>Statewide Electronic Filing System</i> 5157	Probable Savings/(Cost) from <i>Judicial Fund</i> 573
2016	\$165,150	\$99,090
2017	\$165,150	\$99,090
2018	\$165,150	\$99,090
2019	\$165,150	\$99,090
2020	\$165,150	\$99,090

Fiscal Analysis

The bill would amend the Code of Criminal Procedure to decrease the waiting periods for formal charging instruments to not be filed before a petition for an expunction can be filed and makes clarifying changes that do not change expunction procedures or eligibility.

The bill also expands the situations in which a person can obtain an order of nondisclosure to include certain fine-only misdemeanor cases. This would apply to fine-only misdemeanor cases other than traffic offenses and offenses under a municipal ordinance or county order. A person

that has been convicted of one of these relevant fine-only offenses may petition for an order of nondisclosure if the person has satisfied the judgment. Also, a person that has been placed on deferred disposition may petition for an order of nondisclosure if the person has received a dismissal. The petition may be made after the first anniversary of the conviction or dismissal.

The bill would provide that eligible persons seeking to obtain an order of nondisclosure must file a petition accompanied by regular civil filing fees plus a special \$28 filing fee that is deposited to the credit of the general fund of the municipality or county, as applicable. The petition would be filed with the court that convicted the defendant or placed the defendant on deferred disposition.

The bill would take effect September 1, 2015.

Methodology

The Office of Court Administration (OCA) anticipates that the bill would expand the pool of persons eligible to file a petition for an order of nondisclosure and would result in additional filing fee revenue to the State. The bill would primarily impact courts that hear fine-only misdemeanors, or justice and municipal courts. There are no civil filing fees in municipal courts and so the only fee that would be charged on these orders of nondisclosure would be \$28 for filing a petition for an order of nondisclosure. This fee revenue does not go to the state.

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Based on this information, there would be 220,230 people eligible to file petitions for orders of nondisclosure (194,598 + 25,632). OCA estimates that 10 percent of persons eligible to file petitions for orders of nondisclosure would do so, or an estimated 22,023 persons. Furthermore, OCA estimates that 75 percent of those eligible to file petitions for orders of nondisclosure, and that would do so, would pay filing fees, or 16,515 persons, with the remaining 25 percent claiming indigency and not paying filing fees.

In justice courts, 16,515 new cases multiplied by the \$10 fee for statewide e-filing would yield \$165,150 each year to the General Revenue Dedicated Statewide Electronic Filing System Account No. 5157 and multiplied by the \$6 fee for basic civil legal services for indigents would yield \$99,090 to the Judicial Fund. This analysis assumes cases and revenues would continue in a like manner each year through fiscal year 2020.

Local Government Impact

The Office of Court Administration estimates that there will be a significant positive fiscal impact

to counties and cities. In cities, there will be a \$28 fee collected for an estimated 32,581 cases which would result in \$912,268 in revenue. In counties, there will be a \$28 fee collected for an estimated 16,515 cases which would result in \$462,420 in new revenue.

Also, there is a \$25 basic filing fee in justice courts which stays with the county. Based on the assumption 16,515 cases would be filed, this would result in \$412,875 in new revenue. Additionally, in some counties, a filing fee of up to \$5 is assessed in justice courts to support alternative dispute resolution programs. In such counties, this would translate into additional revenue.

Source Agencies: 405 Department of Public Safety, 212 Office of Court Administration,
Texas Judicial Council

LBB Staff: UP, KJo, MW, GDz

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION

April 19, 2015

TO: Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: **HB3579** by Alonzo (Relating to the expunction of records and files relating to an offense for which a person is arrested.); **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure to decrease the waiting periods for formal charging instruments to not be filed before a petition for an expunction can be filed and makes clarifying changes that do not change expunction procedures or eligibility. Based on the analysis of the Office of Court Administration, duties and responsibilities associated with implementing the provisions of the bill could be accomplished by utilizing existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405
Department of Public Safety

LBB Staff: UP, KJo, GDz