

By: Canales

H.B. No. 322

A BILL TO BE ENTITLED

AN ACT

relating to the automatic expunction of arrest records and files for certain veterans and the waiver of fees and costs charged for the expunction.

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

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

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

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

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

(B) convicted and subsequently:

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

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

(2) the person has been released and the charge, if

any, has not resulted in a final conviction and is no longer pending and there was no court-ordered community supervision under Chapter 42A for the offense, unless the offense is a Class C misdemeanor, provided that:

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

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

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

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

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

1 person was arrested; or

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

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

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

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

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

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

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

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

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

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

14 (a) A person who is entitled to expunction of records and
15 files under Article 55.01(a)(1)(B)(i) or under Article
16 55.01(a)(2), other than Article 55.01(a)(2)(A)(ii)(a), or a person
17 who is eligible for expunction of records and files under Article
18 55.01(b) may file an ex parte petition for expunction in a district
19 court for the county in which:

20 (1) the petitioner was arrested; or

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

22 SECTION 4. Article 102.006(b), Code of Criminal Procedure,
23 is amended to read as follows:

24 (b) The fees under Subsection (a) shall be waived if[÷

25 [~~1~~] the petitioner:

26 (1) seeks expunction of a criminal record that relates
27 to an arrest for an offense of which the person was acquitted, other

1 than an acquittal for an offense described by Article 55.01(c), ~~+~~ [✓]
2 and

3 ~~[(2)]~~ the petition for expunction is filed not later
4 than the 30th day after the date of the acquittal; or

5 (2) is entitled to expunction under Article
6 55.01(a)(2)(A)(ii)(a) after successful completion of a veterans
7 treatment court program created under Chapter 124, Government Code,
8 or former law.

9 SECTION 5. Section 124.001(b), Government Code, is amended
10 to read as follows:

11 (b) If a defendant successfully completes a veterans
12 treatment court program, after notice to the attorney representing
13 the state and a hearing in the veterans treatment court at which
14 that court determines that a dismissal is in the best interest of
15 justice, the veterans treatment court shall provide to the court in
16 which the criminal case is pending information about the dismissal
17 and shall include all of the information required about the
18 defendant for a petition for expunction under Section 2(b), Article
19 55.02, Code of Criminal Procedure. The court in which the criminal
20 case is pending shall dismiss the case against the defendant and:

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

24 (2) if that trial court is not a district court, the
25 court shall forward the appropriate dismissal and expunction
26 information to a district court with jurisdiction to enter an order
27 of expunction on behalf of the defendant under Section 1a(a-1),

1 Article 55.02, Code of Criminal Procedure.

2 SECTION 6. (a) Except as provided by Subsection (b) of
3 this section, this Act applies to the expunction of arrest records
4 and files for a person who successfully completes a veterans
5 treatment court program under Chapter 124, Government Code, or
6 former law before, on, or after the effective date of this Act,
7 regardless of when the underlying arrest occurred.

8 (b) The change in law made by this Act to Article 102.006,
9 Code of Criminal Procedure, applies to the fees charged or costs
10 assessed for an expunction order entered on or after the effective
11 date of this Act, regardless of whether the underlying arrest
12 occurred before, on, or after the effective date of this Act.

13 (c) For a person who is entitled to expunction under Article
14 55.01(a)(2)(A)(ii)(a), Code of Criminal Procedure, as amended by
15 this Act, based on a successful completion of a veterans treatment
16 court program under Chapter 124, Government Code, or former law
17 before the effective date of this Act, notwithstanding the 30-day
18 time limit provided for the court to enter an automatic order of
19 expunction under Section 1a(a-1), Article 55.02, Code of Criminal
20 Procedure, as added by this Act, the court shall enter an order of
21 expunction for the person as soon as practicable after the court
22 receives written notice from any party to the case about the
23 person's entitlement to the expunction.

24 SECTION 7. This Act takes effect September 1, 2017.