

By: Alonzo

H.B. No. 1012

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

7 Art. 55.01. RIGHT TO EXPUNCTION. (a) A person who has been  
8 placed under a custodial or noncustodial arrest for commission of  
9 either a felony or misdemeanor is entitled to have all records and  
10 files relating to the offense for which the person was arrested  
11 [~~arrest~~] expunged if:

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

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

16 (B) convicted and subsequently:

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

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

24 (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 Chapter 42A for that  
5 [~~the~~] offense[~~7~~] unless the offense is a Class C misdemeanor,  
6 provided that:

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

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

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

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

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

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

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

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

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

20 (a-1) Notwithstanding any other provision of this article,  
21 a person may not expunge offense records and files if the applicable  
22 [~~relating to an~~] arrest occurred [~~that occurs~~] pursuant to a  
23 warrant issued under Article 42A.751(b).

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

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

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

9 (1) the person is:

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

12 (B) convicted of the offense; and

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

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

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

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

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

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

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

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

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

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

27 (2) the following information regarding the arrest:

- 1 (A) the date of arrest;
- 2 (B) the offense charged against the person  
3 arrested;
- 4 (C) the name of the county or municipality in  
5 which the arrest occurred; and
- 6 (D) the name of the arresting agency; and
- 7 (3) a statement that:
- 8 (A) the applicant is not the person arrested and  
9 for whom the applicable [~~arrest~~] records and files were created;  
10 and
- 11 (B) the applicant did not give the person  
12 arrested consent to falsely identify himself or herself as the  
13 applicant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 SECTION 8. This Act takes effect September 1, 2017.