

By: Blanco

H.B. No. 1740

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the administration of veterans treatment court  
3 programs, the expunction of arrest records and files for certain  
4 participants who successfully complete a program, and the issuance  
5 of orders of nondisclosure for participants convicted of a  
6 misdemeanor; changing a fee.

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

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

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

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

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

18 (B) convicted and subsequently:

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

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

1 person's actual innocence; or

2 (2) the person has been released and the charge, if  
3 any, has not resulted in a final conviction and is no longer pending  
4 and there was no court-ordered community supervision under Chapter  
5 42A for the offense, 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 a misdemeanor offense  
11 based on the person's arrest or charging the person with the  
12 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 arrest, and:

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

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

26 (c) at least three years have elapsed  
27 from the date of arrest if the arrest for which the expunction was

1 sought was for an offense punishable as a felony or if there was a  
2 felony charge arising out of the same transaction for which the  
3 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 arrest, was dismissed or quashed, and the court finds that the  
10 indictment or information was dismissed or quashed because:

11 (a) the person was arrested for an  
12 offense punishable as a Class B or Class C misdemeanor and  
13 subsequently completed a veterans treatment court program under  
14 Chapter 124, Government Code, or former law;

15 (b) the person completed a pretrial  
16 intervention program authorized under Section 76.011, Government  
17 Code, or, if the person was arrested for an offense punishable as a  
18 Class A misdemeanor or any higher category of offense, a veterans  
19 treatment court program under Chapter 124, Government Code, or  
20 former law;

21 (c) [~~because~~] the presentment had  
22 been made because of mistake, false information, or other similar  
23 reason indicating absence of probable cause at the time of the  
24 dismissal to believe the person committed the offense; or

25 (d) [~~or because~~] the indictment or  
26 information was void; or

27 (B) prosecution of the person for the offense for

1 which the person was arrested is no longer possible because the  
2 limitations period has expired.

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

6 (a-1) A trial court dismissing a case of a person arrested  
7 for a Class B or Class C misdemeanor, following the person's  
8 successful completion of a veterans treatment court program created  
9 under Chapter 124, Government Code, or former law, if the trial  
10 court is a district court, or a district court in the county in  
11 which the trial court is located shall enter an order of expunction  
12 for a person entitled to expunction under Article  
13 55.01(a)(2)(A)(ii)(a) not later than the 30th day after the date  
14 the court dismisses the case or receives the information regarding  
15 that dismissal, as applicable.

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

18 (a) A person who is entitled to expunction of records and  
19 files under Article 55.01(a)(1)(B)(i) or under Article  
20 55.01(a)(2), other than Article 55.01(a)(2)(A)(ii)(a), or a person  
21 who is eligible for expunction of records and files under Article  
22 55.01(b) may file an ex parte petition for expunction in a district  
23 court for the county in which:

24 (1) the petitioner was arrested; or

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

26 SECTION 4. Section 103.027(a), Government Code, is amended  
27 to read as follows:

1           (a) Fees and costs shall be paid or collected under the  
2 Government Code as follows:

3           (1) filing a certified copy of a judicial finding of  
4 fact and conclusion of law if charged by the secretary of state  
5 (Sec. [51.905](#), Government Code) . . . \$15;

6           (2) cost paid by each surety posting the bail bond for  
7 an offense other than a misdemeanor punishable by fine only under  
8 Chapter [17](#), Code of Criminal Procedure, for the assistant  
9 prosecutor supplement fund and the fair defense account (Sec.  
10 [41.258](#), Government Code) . . . \$15, provided the cost does not  
11 exceed \$30 for all bail bonds posted at that time for an individual  
12 and the cost is not required on the posting of a personal or cash  
13 bond;

14           (3) to participate in a court proceeding in this  
15 state, a nonresident attorney fee (Sec. [82.0361](#), Government Code) .  
16 . . \$250 except as waived or reduced under supreme court rules for  
17 representing an indigent person;

18           (4) on a party's appeal of a final decision in a  
19 contested case, the cost of preparing the original or a certified  
20 copy of the record of the agency proceeding, if required by the  
21 agency's rule, as a court cost (Sec. [2001.177](#), Government Code) . .  
22 . as assessed by the court, all or part of the cost of preparation;

23           (5) a program fee for a drug court program (Sec.  
24 [123.004](#), Government Code) . . . not to exceed \$1,000;

25           (6) an alcohol or controlled substance testing,  
26 counseling, and treatment fee (Sec. [123.004](#), Government Code) . . .  
27 the amount necessary to cover the costs of testing, counseling, and

1 treatment;

2 (7) a reasonable program fee for a veterans treatment  
3 court program (Sec. 124.005, Government Code) . . . not to exceed  
4 \$500 [~~\$1,000~~];

5 (8) a testing, counseling, and treatment fee for  
6 testing, counseling, or treatment performed or provided under a  
7 veterans treatment court program (Sec. 124.005, Government Code) .  
8 . . the amount necessary to cover the costs of testing, counseling,  
9 or treatment; and

10 (9) a nonrefundable program fee for a prostitution  
11 prevention program (Sec. 126.006, Government Code) . . . a  
12 reasonable amount not to exceed \$1,000, which must include a  
13 counseling and services fee in an amount necessary to cover the  
14 costs of counseling and services provided by the program, a victim  
15 services fee in an amount equal to 10 percent of the total fee, and a  
16 law enforcement training fee in an amount equal to five percent of  
17 the total fee.

18 SECTION 5. Section 124.001, Government Code, is amended by  
19 amending Subsection (b) and adding Subsections (c) and (d) to read  
20 as follows:

21 (b) If a defendant who was arrested for or charged with, but  
22 not convicted of or placed on deferred adjudication community  
23 supervision for, an offense successfully completes a veterans  
24 treatment court program, after notice to the attorney representing  
25 the state and a hearing in the veterans treatment court at which  
26 that court determines that a dismissal is in the best interest of  
27 justice, the veterans treatment court shall provide its findings

1 with respect to the dismissal to the court in which the criminal  
2 case is pending and shall include, for a defendant entitled to  
3 expunction, all of the information required for a petition under  
4 Section 2(b), Article 55.02, Code of Criminal Procedure. If the  
5 veterans treatment court determines that a dismissal is in the best  
6 interest of justice for a program participant, the court in which  
7 the criminal case is pending shall dismiss the case against the  
8 participant. For a participant who is entitled to an automatic  
9 order of expunction under Section 1a(a-1), Article 55.02, Code of  
10 Criminal Procedure, the court in which the criminal case is pending  
11 shall:

12           (1) enter the order on behalf of the participant, if  
13 that court is a district court; or

14           (2) if that court is not a district court, forward the  
15 appropriate dismissal and expunction information to a district  
16 court with jurisdiction to enter the order on behalf of the  
17 participant [defendant].

18           (c) Regardless of whether the defendant was convicted of the  
19 offense for which the defendant entered the veterans treatment  
20 court program or whether the applicable court with jurisdiction  
21 over the criminal case deferred further proceedings without  
22 entering an adjudication of guilt, if a defendant successfully  
23 completes a veterans treatment court program and the case was not  
24 dismissed under Subsection (b), after notice to the state and a  
25 hearing on whether the defendant is otherwise entitled to the  
26 petition and whether issuance of the order is in the best interest  
27 of justice, the court shall enter an order of nondisclosure of

1 criminal history record information under Subchapter E-1, Chapter  
2 411, as if the defendant had received a discharge and dismissal  
3 under Article 42A.111, Code of Criminal Procedure, with respect to  
4 all records and files related to the defendant's arrest for the  
5 offense for which the defendant entered the program if the  
6 defendant entered the program based on an offense punishable as a  
7 misdemeanor and:

8 (1) has not been previously convicted of an offense  
9 listed in Article 42A.054(a), Code of Criminal Procedure, or a  
10 sexually violent offense, as defined by Article 62.001, Code of  
11 Criminal Procedure; and

12 (2) is not convicted for any felony offense between  
13 the date on which the defendant successfully completed the program  
14 and the second anniversary of that date.

15 (d) Notwithstanding Subsection (c), a defendant is not  
16 entitled to petition the court for an order of nondisclosure of  
17 criminal history record information following successful  
18 completion of a veterans treatment court program if the defendant's  
19 entry into the program arose as the result of a conviction for an  
20 offense involving the operation of a motor vehicle while  
21 intoxicated and it was shown on the trial of the offense that the  
22 defendant's operation of a motor vehicle while intoxicated caused  
23 bodily injury to another. In this subsection, "bodily injury" has  
24 the meaning assigned by Section 1.07, Penal Code.

25 SECTION 6. Sections 124.002(a) and (c), Government Code,  
26 are amended to read as follows:

27 (a) The commissioners court of a county may establish a



1 veterans treatment court program for persons arrested for, ~~[or]~~  
2 charged with, convicted of, or placed on deferred adjudication  
3 community supervision for any misdemeanor or felony offense. A  
4 defendant is eligible to participate in a veterans treatment court  
5 program established under this chapter only if the attorney  
6 representing the state consents to the defendant's participation in  
7 the program and if the court in which the criminal case is pending  
8 or in which the defendant was convicted or placed on deferred  
9 adjudication community supervision, as applicable, finds that the  
10 defendant is a veteran or current member of the United States armed  
11 forces, including a member of the reserves, national guard, or  
12 state guard, who:

13 (1) suffers from a brain injury, mental illness, or  
14 mental disorder, including post-traumatic stress disorder, or was a  
15 victim of military sexual trauma if the injury, illness, disorder,  
16 or trauma ~~[that]~~:

17 (A) occurred during or resulted from the  
18 defendant's military service; and

19 (B) affected the defendant's criminal conduct at  
20 issue in the case; or

21 (2) is a defendant whose participation in a veterans  
22 treatment court program, considering the circumstances of the  
23 defendant's conduct, personal and social background, and criminal  
24 history, is likely to achieve the objective of ensuring public  
25 safety through rehabilitation of the veteran in the manner provided  
26 by Section 1.02(1), Penal Code.

27 (c) Proof of matters described by Subsection (a) may be

1 submitted to the applicable criminal court [~~in which the criminal~~  
2 ~~case is pending~~] in any form the court determines to be appropriate,  
3 including military service and medical records, previous  
4 determinations of a disability by a veteran's organization or by  
5 the United States Department of Veterans Affairs, testimony or  
6 affidavits of other veterans or service members, and prior  
7 determinations of eligibility for benefits by any state or county  
8 veterans office. The court's findings must accompany any docketed  
9 case.

10 SECTION 7. Section 124.003(a), Government Code, is amended  
11 to read as follows:

12 (a) A veterans treatment court program established under  
13 this chapter must:

14 (1) if there has not yet been a disposition in the  
15 criminal case, ensure that a defendant eligible for participation  
16 in the program is provided legal counsel before volunteering to  
17 proceed through the program and while participating in the program;

18 (2) allow a participant arrested for or charged with  
19 an offense to withdraw from the program at any time before a trial  
20 on the merits has been initiated;

21 (3) provide a participant with a court-ordered  
22 individualized treatment plan indicating the services that will be  
23 provided to the participant; and

24 (4) ensure that the jurisdiction of the veterans  
25 treatment court continues for a period of not less than six months  
26 but does not continue beyond the period of community supervision  
27 for the offense charged.

1 SECTION 8. Section 124.005(a), Government Code, is amended  
2 to read as follows:

3 (a) A veterans treatment court program established under  
4 this chapter may collect from a participant in the program:

5 (1) a reasonable program fee not to exceed \$500  
6 [~~\$1,000~~]; and

7 (2) a testing, counseling, and treatment fee in an  
8 amount necessary to cover the costs of any testing, counseling, or  
9 treatment performed or provided under the program.

10 SECTION 9. Section 103.0271, Government Code, is repealed.

11 SECTION 10. (a) The changes in law made by this Act in  
12 amending Chapter 55, Code of Criminal Procedure, and in amending  
13 Section 124.001(b), Government Code, apply to the expunction of  
14 arrest records and files for an arrested person who successfully  
15 completes a veterans treatment court program under Chapter 124,  
16 Government Code, or former law, before, on, or after the effective  
17 date of this Act, regardless of when the underlying arrest  
18 occurred.

19 (b) For a person who is arrested for a Class B or Class C  
20 misdemeanor and who is entitled to expunction under Article  
21 55.01(a)(2)(A)(ii)(a), Code of Criminal Procedure, as added by this  
22 Act, based on a successful completion of a veterans treatment court  
23 program under Chapter 124, Government Code, or former law, before  
24 the effective date of this Act, notwithstanding the 30-day time  
25 limit provided for the court to enter an automatic order of  
26 expunction under Section 1a(a-1), Article 55.02, Code of Criminal  
27 Procedure, as added by this Act, the court shall enter an order of

1 expunction for the person as soon as practicable after the court  
2 receives written notice from any party to the case about the  
3 person's entitlement to the expunction.

4 (c) The change in law made by this Act by adding Sections  
5 124.001(c) and (d), Government Code, and amending Sections 124.002  
6 and 124.005(a), Government Code, applies to a person who, on or  
7 after the effective date of this Act, enters a veterans treatment  
8 court program under Chapter 124, Government Code, regardless of  
9 whether the person committed the offense for which the person  
10 enters the program before, on, or after the effective date of this  
11 Act.

12 SECTION 11. To the extent of any conflict, this Act prevails  
13 over another Act of the 85th Legislature, Regular Session, 2017,  
14 relating to nonsubstantive additions to and corrections in enacted  
15 codes.

16 SECTION 12. This Act takes effect September 1, 2017.