

By: Thompson of Harris

H.B. No. 1749

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the expunction of arrest records and files relating to  
3 an offense punishable by fine only; authorizing a fee.

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 by amending Subsection (b) and adding Subsection (b-1) to  
7 read as follows:

8 (b) Except as provided by Subsection (c) and subject to  
9 Subsection (b-1), a district court, a justice court, or a municipal  
10 court of record may expunge all records and files relating to the  
11 arrest of a person [~~who has been arrested for commission of a felony~~  
12 ~~or misdemeanor~~] under the procedure established under Article 55.02  
13 if:

14 (1) the person is:

15 (A) tried for the offense for which the person  
16 was arrested;

17 (B) convicted of the offense; and

18 (C) acquitted by the court of criminal appeals  
19 or, if the period for granting a petition for discretionary review  
20 has expired, by a court of appeals; or

21 (2) an office of the attorney representing the state  
22 authorized by law to prosecute the offense for which the person was  
23 arrested recommends the expunction to the [~~appropriate district~~]  
24 court before the person is tried for the offense, regardless of

1 whether an indictment or information has been presented against the  
2 person in relation to the offense.

3 (b-1) A justice court or a municipal court of record may  
4 only expunge records and files under Subsection (b) that relate to  
5 the arrest of a person for an offense punishable by fine only.

6 SECTION 2. Section 1, Article 55.02, Code of Criminal  
7 Procedure, is amended to read as follows:

8 Sec. 1. At the request of the acquitted person [~~defendant~~]  
9 and after notice to the state, the trial court presiding over the  
10 case in which the person [~~defendant~~] was acquitted, if the trial  
11 court is a district court, a justice court, or a municipal court of  
12 record, or a district court in the county in which the trial court  
13 is located shall enter an order of expunction for a person entitled  
14 to expunction under Article 55.01(a)(1)(A) not later than the 30th  
15 day after the date of the acquittal. On [~~Upon~~] acquittal, the trial  
16 court shall advise the acquitted person [~~defendant~~] of the right to  
17 expunction. The acquitted person [~~defendant~~] shall provide to the  
18 [~~district~~] court all of the information required in a petition for  
19 expunction under Section 2(b). The attorney for the acquitted  
20 person [~~defendant~~] in the case in which the person [~~defendant~~] was  
21 acquitted, if the person [~~defendant~~] was represented by counsel, or  
22 the attorney for the state, if the person [~~defendant~~] was not  
23 represented by counsel, shall prepare the order for the court's  
24 signature.

25 SECTION 3. Section 1a(a), Article 55.02, Code of Criminal  
26 Procedure, is amended to read as follows:

27 (a) The trial court presiding over a case in which a person

1 ~~[defendant]~~ is convicted and subsequently granted relief or  
2 pardoned on the basis of actual innocence of the offense of which  
3 the person ~~[defendant]~~ was convicted, if the trial court is a  
4 district court, a justice court, or a municipal court of record, or  
5 a district court in the county in which the trial court is located  
6 shall enter an order of expunction for a person entitled to  
7 expunction under Article 55.01(a)(1)(B)(ii) not later than the 30th  
8 day after the date the court receives notice of the pardon or other  
9 grant of relief. The person shall provide to the ~~[district]~~ court  
10 all of the information required in a petition for expunction under  
11 Section 2(b).

12 SECTION 4. Section 2, Article 55.02, Code of Criminal  
13 Procedure, is amended by amending Subsections (a) and (b) and  
14 adding Subsection (a-1) to read as follows:

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

- 20 (1) the petitioner was arrested; or  
21 (2) the offense was alleged to have occurred.

22 (a-1) If the arrest for which expunction is sought is for an  
23 offense punishable by fine only, a person who is entitled to  
24 expunction of records and files under Article 55.01(a) or a person  
25 who is eligible for expunction of records and files under Article  
26 55.01(b) may file an ex parte petition for expunction in a justice  
27 court or a municipal court of record in the county in which:

1           (1) the petitioner was arrested; or

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

3           (b) A [The] petition filed under Subsection (a) or (a-1)  
4 must be verified and must include the following or an explanation  
5 for why one or more of the following is not included:

6           (1) the petitioner's:

7                 (A) full name;

8                 (B) sex;

9                 (C) race;

10                (D) date of birth;

11                (E) driver's license number;

12                (F) social security number; and

13                (G) address at the time of the arrest;

14           (2) the offense charged against the petitioner;

15           (3) the date the offense charged against the  
16 petitioner was alleged to have been committed;

17           (4) the date the petitioner was arrested;

18           (5) the name of the county where the petitioner was  
19 arrested and if the arrest occurred in a municipality, the name of  
20 the municipality;

21           (6) the name of the agency that arrested the  
22 petitioner;

23           (7) the case number and court of offense; and

24           (8) together with the applicable physical or e-mail  
25 addresses, a list of all:

26                 (A) law enforcement agencies, jails or other  
27 detention facilities, magistrates, courts, prosecuting attorneys,

1 correctional facilities, central state depositories of criminal  
2 records, and other officials or agencies or other entities of this  
3 state or of any political subdivision of this state;

4 (B) central federal depositories of criminal  
5 records that the petitioner has reason to believe have records or  
6 files that are subject to expunction; and

7 (C) private entities that compile and  
8 disseminate for compensation criminal history record information  
9 that the petitioner has reason to believe have information related  
10 to records or files that are subject to expunction.

11 SECTION 5. Article 102.006, Code of Criminal Procedure, is  
12 amended to read as follows:

13 Art. 102.006. FEES IN EXPUNCTION PROCEEDINGS. (a) In  
14 addition to any other fees required by other law and except as  
15 provided by Subsection (b), a petitioner seeking expunction of a  
16 criminal record in a district court shall pay the following fees:

17 (1) the fee charged for filing an ex parte petition in  
18 a civil action in district court;

19 (2) \$1 plus postage for each certified mailing of  
20 notice of the hearing date; and

21 (3) \$2 plus postage for each certified mailing of  
22 certified copies of an order of expunction.

23 (a-1) In addition to any other fees required by other law  
24 and except as provided by Subsection (b), a petitioner seeking  
25 expunction of a criminal record in a justice court or a municipal  
26 court of record under Chapter 55 shall pay a fee of \$100 for filing  
27 an ex parte petition for expunction to defray the cost of notifying

1 state agencies of orders of expunction under that chapter.

2 (b) The fees under Subsection (a) or the fee under  
3 Subsection (a-1), as applicable, shall be waived if:

4 (1) the petitioner seeks expunction of a criminal  
5 record that relates to an arrest for an offense of which the person  
6 was acquitted, other than an acquittal for an offense described by  
7 Article 55.01(c); and

8 (2) the petition for expunction is filed not later  
9 than the 30th day after the date of the acquittal.

10 SECTION 6. Section 27.031, Government Code, is amended by  
11 adding Subsection (e) to read as follows:

12 (e) A justice court has concurrent jurisdiction with a  
13 district court and a municipal court of record over expunction  
14 proceedings relating to the arrest of a person for an offense  
15 punishable by fine only.

16 SECTION 7. Section 30.00005, Government Code, is amended by  
17 adding Subsection (e) to read as follows:

18 (e) The court has concurrent jurisdiction with a district  
19 court and a justice court over expunction proceedings relating to  
20 the arrest of a person for an offense punishable by fine only.

21 SECTION 8. Subchapter B, Chapter 103, Government Code, is  
22 amended by adding Section 103.02101 to read as follows:

23 Sec. 103.02101. ADDITIONAL FEE IN CERTAIN EXPUNCTION CASES:  
24 CODE OF CRIMINAL PROCEDURE. A petitioner filing an ex parte  
25 petition for expunction in a justice court or a municipal court of  
26 record shall pay a fee under Article 102.006, Code of Criminal  
27 Procedure, of \$100 to defray the costs of notifying state agencies

1 of orders of expunction.

2 SECTION 9. Section 202.001(b), Local Government Code, is  
3 amended to read as follows:

4 (b) The following records may be destroyed without meeting  
5 the conditions of Subsection (a):

6 (1) records the destruction or obliteration of which  
7 is directed by an expunction order issued by a [~~district~~] court  
8 pursuant to state law; and

9 (2) records defined as exempt from scheduling or  
10 filing requirements by rules adopted by the commission or listed as  
11 exempt in a records retention schedule issued by the commission.

12 SECTION 10. This Act applies to an expunction of records and  
13 files relating to any criminal offense that occurred before, on, or  
14 after the effective date of this Act.

15 SECTION 11. This Act takes effect September 1, 2017.