

By: Muñoz, Jr.

H.B. No. 2903

A BILL TO BE ENTITLED

AN ACT

relating to the entitlement of certain persons to the expunction of  
arrest records and files.

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

SECTION 1. Articles 55.01(a) and (b), Code of Criminal  
Procedure, are 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

1 and there was no court-ordered community supervision under Chapter  
2 42A for the offense, unless the offense is a Class C misdemeanor,  
3 provided that:

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

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

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

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

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

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

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

14 (B) prosecution of the person for the offense for  
15 which the person was arrested is no longer possible because the  
16 limitations period has expired; or

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

22 (b) Except as provided by Subsection (c), a district court  
23 may expunge all records and files relating to the arrest of a person  
24 who has been arrested for commission of a felony or misdemeanor  
25 under the procedure established under Article 55.02 if ~~+~~

26 ~~(1)~~ the person is:

27 (1) ~~(A)~~ tried for the offense for which the person

1 was arrested;

2           (2) [~~(B)~~] convicted of the offense; and

3           (3) [~~(C)~~] acquitted by the court of criminal appeals  
4 or, if the period for granting a petition for discretionary review  
5 has expired, by a court of appeals [~~, or~~

6           ~~[(2) an office of the attorney representing the state  
7 authorized by law to prosecute the offense for which the person was  
8 arrested recommends the expunction to the appropriate district  
9 court before the person is tried for the offense, regardless of  
10 whether an indictment or information has been presented against the  
11 person in relation to the offense].~~

12           SECTION 2. Chapter 55, Code of Criminal Procedure, is  
13 amended by adding Article 55.012 to read as follows:

14           Art. 55.012. EXPUNCTION OF CERTAIN NONVIOLENT MISDEMEANOR  
15 OFFENSES. (a) A person who has been placed under a custodial or  
16 noncustodial arrest for a misdemeanor offense other than a  
17 misdemeanor offense under Title 5, Penal Code, is entitled to have  
18 all records and files related to the arrest expunged if:

19           (1) the person was placed on deferred adjudication  
20 community supervision under Subchapter C, Chapter 42A, for the  
21 misdemeanor offense and subsequently received a discharge and  
22 dismissal under Article 42A.111;

23           (2) the person has not been arrested for the  
24 commission of any Class B misdemeanor, Class A misdemeanor, or  
25 felony committed after the date of the misdemeanor offense for  
26 which the person was placed on deferred adjudication community  
27 supervision; and

1           (3) the attorney representing the state recommends the  
2 expunction to the court that granted the deferred adjudication  
3 community supervision or a period of not less than five years has  
4 passed since the date on which the person received the discharge and  
5 dismissal described by Subdivision (1).

6           (b) The person must submit an ex parte petition for  
7 expunction to the court that granted the deferred adjudication  
8 community supervision. The petition must be verified and must  
9 contain:

10           (1) the information described by Section 2(b), Article  
11 55.02; and

12           (2) a statement that the person has not been arrested  
13 for the commission of any Class B misdemeanor, Class A misdemeanor,  
14 or felony committed after the date of the misdemeanor offense for  
15 which the person was placed on deferred adjudication community  
16 supervision.

17           (c) If the court finds that the petitioner is entitled to  
18 expunction of any arrest records and files that are the subject of  
19 the petition, the court shall enter an order directing expunction  
20 in a manner consistent with the procedures described by Section 1a,  
21 Article 55.02.

22           SECTION 3. Section 109.005(a), Business & Commerce Code, is  
23 amended to read as follows:

24           (a) A business entity may not publish any criminal record  
25 information in the business entity's possession with respect to  
26 which the business entity has knowledge or has received notice  
27 that:

1 (1) an order of expunction has been issued under  
2 Chapter 55 [~~Article 55.02~~], Code of Criminal Procedure; or

3 (2) an order of nondisclosure of criminal history  
4 record information has been issued under Subchapter E-1, Chapter  
5 411, Government Code.

6 SECTION 4. Article 55.011(b), Code of Criminal Procedure,  
7 is amended to read as follows:

8 (b) A close relative of a deceased person who, if not  
9 deceased, would be entitled to expunction of records and files  
10 under this chapter [~~Article 55.01~~] may file on behalf of the  
11 deceased person an ex parte petition for expunction under Section 2  
12 or 2a, Article 55.02, or Article 55.012, as applicable. If the  
13 court finds that the deceased person would be entitled to  
14 expunction of any record or file that is the subject of the  
15 petition, the court shall enter an order directing expunction.

16 SECTION 5. Section 411.0835, Government Code, is amended to  
17 read as follows:

18 Sec. 411.0835. PROHIBITION AGAINST DISSEMINATION TO  
19 CERTAIN PRIVATE ENTITIES. If the department receives information  
20 indicating that a private entity that purchases criminal history  
21 record information from the department has been found by a court to  
22 have committed three or more violations of Section 552.1425 by  
23 compiling or disseminating information with respect to which an  
24 order of expunction has been issued under Chapter 55 [~~Article~~  
25 55.02], Code of Criminal Procedure, or an order of nondisclosure of  
26 criminal history record information has been issued under  
27 Subchapter E-1, the department may not release any criminal history

1 record information to that entity until the first anniversary of  
2 the date of the most recent violation.

3 SECTION 6. Section 411.0851(a), Government Code, is amended  
4 to read as follows:

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

9 (1) an order of expunction has been issued under  
10 Chapter 55 [~~Article 55.02~~], Code of Criminal Procedure; or

11 (2) an order of nondisclosure of criminal history  
12 record information has been issued under Subchapter E-1.

13 SECTION 7. Section 411.151(b), Government Code, is amended  
14 to read as follows:

15 (b) A person may petition for the expunction of a DNA record  
16 under the procedures established under Article 55.02, Code of  
17 Criminal Procedure, if the person is entitled to the expunction of  
18 records relating to the offense to which the DNA record is related  
19 under Chapter 55 [~~Article 55.01~~], Code of Criminal Procedure.

20 SECTION 8. Section 552.1425(a), Government Code, is amended  
21 to read as follows:

22 (a) A private entity that compiles and disseminates for  
23 compensation criminal history record information may not compile or  
24 disseminate information with respect to which the entity has  
25 received notice that:

26 (1) an order of expunction has been issued under  
27 Chapter 55 [~~Article 55.02~~], Code of Criminal Procedure; or

1           (2) an order of nondisclosure of criminal history  
2 record information has been issued under Subchapter E-1, Chapter  
3 [411](#).

4           SECTION 9. 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 10. This Act takes effect September 1, 2017.