

By: Dutton

H.B. No. 3139

A BILL TO BE ENTITLED

AN ACT

relating to the expunction of arrest records for and issuance of orders of nondisclosure for certain persons without the necessity of filing a petition; imposing a fee.

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

SECTION 1. Article 45.051(e), Code of Criminal Procedure, is amended to read as follows:

(e) Regardless of whether the person has filed a petition for expunction, a court that dismisses [Records relating to] a complaint under [dismissed as provided by] this article shall order the conviction, complaints, verdicts, sentences, and other documents relating to the offense, including any documents in the possession of a law enforcement agency, to [may] be expunged from the person's record [under Article 55.01]. After entry of the order, the person is released from all disabilities resulting from the [If a] complaint [is] dismissed under this article, [there is not a final conviction] and the complaint may not be shown or made known [used against the person] for any purpose.

SECTION 2. Article 45.053(d), Code of Criminal Procedure, is amended to read as follows:

(d) Regardless of whether the person has filed a petition for expunction, a court that dismisses [Records relating to] a complaint [dismissed] under this article shall order the conviction, complaints, verdicts, sentences, and other documents

1 relating to the offense, including any documents in the possession
2 of a law enforcement agency, to ~~may~~ be expunged from the person's
3 record ~~[under Article 55.01 of this code]~~. After entry of the
4 order, the person is released from all disabilities resulting from
5 the ~~[If a]~~ complaint ~~[is]~~ dismissed under this article, ~~[there is~~
6 ~~not a final conviction]~~ and the complaint may not be shown or made
7 known ~~[used against the person]~~ for any purpose.

8 SECTION 3. Section 1, Article 55.02, Code of Criminal
9 Procedure, is amended to read as follows:

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

1 proceed in the manner provided by this section.

2 SECTION 4. Sections 2(a) and (d), Article 55.02, Code of
3 Criminal Procedure, are amended to read as follows:

4 (a) On behalf of a [A] person who is entitled to expunction
5 of records and files under Article 55.01(a)(1)(B)(i) or 55.01(a)(2)
6 or a person who is eligible for expunction of records and files
7 under Article 55.01(b), not later than the 90th day after the date
8 the person becomes entitled to or eligible for expunction, the
9 attorney representing the state whose office prosecuted or would
10 have prosecuted the offense or who is recommending expunction under
11 Article 55.01(b)(2), as applicable, shall [may] file an ex parte
12 petition for expunction in a district court for the county in which:

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

15 (d) If the court finds that [~~the petitioner, or~~] a person
16 for whom an ex parte petition is filed under this section
17 [~~Subsection (e),~~] is entitled to expunction of any records and
18 files that are the subject of the petition, it shall enter an order
19 directing expunction.

20 SECTION 5. Subchapter E-1, Chapter 411, Government Code, is
21 amended by adding Section 411.0738 to read as follows:

22 Sec. 411.0738. ENTRY OF ORDER WITHOUT PETITION. (a) This
23 section applies to a person who is eligible for an order of
24 nondisclosure of criminal history record information under this
25 subchapter, other than a person who is eligible for the order under
26 Section 411.072.

27 (b) Notwithstanding any other provision of this subchapter

1 or Subchapter F, as soon as practicable after the date on which a
2 person described by Subsection (a) becomes eligible to file a
3 petition under this subchapter, the court in which the person was
4 convicted or that placed the person on deferred adjudication
5 community supervision shall, without requiring the person to file a
6 petition, determine whether the person satisfies the requirements
7 of Section 411.074 to receive an order of nondisclosure under this
8 subchapter.

9 (c) If the court makes a finding that the requirements of
10 Section 411.074 are satisfied, the court shall notify the person
11 that an action for an order of nondisclosure of criminal history
12 record information is pending under this subchapter and provide the
13 person with instructions on providing any necessary evidence and
14 paying the fee.

15 (d) The person shall present to the court any evidence
16 requested by the court that is necessary to establish that the
17 person is eligible to receive an order of nondisclosure of criminal
18 history record information under this section.

19 (e) The person must pay a \$28 fee to the clerk of the court
20 before the court issues the order.

21 (f) On receipt of any information requested under
22 Subsection (d) and the fee required under Subsection (e), the court
23 shall issue an order of nondisclosure of criminal history record
24 information under this subchapter prohibiting criminal justice
25 agencies from disclosing to the public criminal history record
26 information related to the offense for which the person was
27 convicted or giving rise to the deferred adjudication community

1 supervision.

2 SECTION 6. Articles 45.051 and 45.053, Code of Criminal
3 Procedure, as amended by this Act, apply to a charge that is
4 dismissed on or after the effective date of this Act, regardless of
5 whether the underlying offense occurred before, on, or after that
6 date.

7 SECTION 7. (a) Section 1, Article 55.02, Code of Criminal
8 Procedure, as amended by this Act, applies to the expunction of
9 arrest records and files for a person entitled to that expunction
10 under Article 55.01(a)(1)(A), Code of Criminal Procedure, before,
11 on, or after the effective date of this Act, regardless of when the
12 underlying arrest occurred.

13 (b) For a person who is entitled to expunction under Article
14 55.01(a)(1)(A), Code of Criminal Procedure, based on an acquittal
15 that occurred before the effective date of this Act,
16 notwithstanding the 30-day time limit provided for the court to
17 enter an automatic order of expunction under Section 1, Article
18 55.02, Code of Criminal Procedure, as amended by this Act, the court
19 shall enter an order of expunction for the person as soon as
20 practicable after the court receives written notice from any party
21 to the case about the person's entitlement to the expunction.

22 SECTION 8. Sections 2(a) and (d), Article 55.02, Code of
23 Criminal Procedure, as amended by this Act, apply only to an arrest
24 that occurs on or after the effective date of this Act.

25 SECTION 9. Section 411.0738, Government Code, as added by
26 this Act, applies to a person who becomes eligible for an order of
27 nondisclosure of criminal history record information on or after

1 the effective date of this Act, regardless of whether the
2 underlying offense that is the subject of the criminal history
3 record information occurred before, on, or after that date.

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