

SENATE AMENDMENTS

2nd Printing

By: Canales, Miller, Wilson, Shine, Blanco,
et al.

H.B. No. 322

A BILL TO BE ENTITLED

AN ACT

relating to the expunction of arrest records and files for certain veterans and the waiver of fees and costs charged for the expunction.

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

SECTION 1. Article 55.01(a), Code of Criminal Procedure, is 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 and there was no court-ordered community supervision under Chapter 42A for the offense, unless the offense is a Class C misdemeanor, provided that:

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

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

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

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

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

1 person was arrested; or

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

6 (ii) if presented at any time following the
7 arrest, was dismissed or quashed, and the court finds that the
8 indictment or information was dismissed or quashed because:

9 (a) the person completed a veterans
10 treatment court program created under Chapter 124, Government Code,
11 or former law;

12 (b) the person completed a pretrial
13 intervention program authorized under Section 76.011, Government
14 Code, other than a veterans treatment court program created under
15 Chapter 124, Government Code, or former law;

16 (c) [because] the presentment had
17 been made because of mistake, false information, or other similar
18 reason indicating absence of probable cause at the time of the
19 dismissal to believe the person committed the offense; or

20 (d) [~~or because~~] the indictment or
21 information was void; or

22 (B) prosecution of the person for the offense for
23 which the person was arrested is no longer possible because the
24 limitations period has expired.

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

1 (a-1) A trial court dismissing a case following a person's
2 successful completion of a veterans treatment court program created
3 under Chapter 124, Government Code, or former law, if the trial
4 court is a district court, or a district court in the county in
5 which the trial court is located may, with the consent of the
6 attorney representing the state, enter an order of expunction for a
7 person entitled to expunction under Article 55.01(a)(2)(A)(ii)(a)
8 not later than the 30th day after the date the court dismisses the
9 case or receives the information regarding that dismissal, as
10 applicable. Notwithstanding any other law, a court that enters an
11 order for expunction under this subsection may not charge any fee or
12 assess any cost for the expunction.

13 SECTION 3. Article 102.006(b), Code of Criminal Procedure,
14 is amended to read as follows:

15 (b) The fees under Subsection (a) shall be waived if[+
16 [~~(1)~~] the petitioner:
17 (1) seeks expunction of a criminal record that relates
18 to an arrest for an offense of which the person was acquitted, other
19 than an acquittal for an offense described by Article 55.01(c), [+]
20 and

21 [~~(2)~~] the petition for expunction is filed not later
22 than the 30th day after the date of the acquittal; or

23 (2) is entitled to expunction under Article
24 55.01(a)(2)(A)(ii)(a) after successful completion of a veterans
25 treatment court program created under Chapter 124, Government Code,
26 or former law.

27 SECTION 4. Section 124.001(b), Government Code, is amended

to read as follows:

(b) If a defendant successfully completes a veterans treatment court program, after notice to the attorney representing the state and a hearing in the veterans treatment court at which that court determines that a dismissal is in the best interest of justice, the veterans treatment court shall provide to the court in which the criminal case is pending information about the dismissal and shall include all of the information required about the defendant for a petition for expunction under Section 2(b), Article 55.02, Code of Criminal Procedure. The court in which the criminal case is pending shall dismiss the case against the defendant and:

(1) if that trial court is a district court, the court may, with the consent of the attorney representing the state, enter an order of expunction on behalf of the defendant under Section 1a(a-1), Article 55.02, Code of Criminal Procedure; or

(2) if that trial court is not a district court, the court may, with the consent of the attorney representing the state, forward the appropriate dismissal and expunction information to enable a district court with jurisdiction to enter an order of expunction on behalf of the defendant under Section 1a(a-1), Article 55.02, Code of Criminal Procedure.

SECTION 5. (a) Except as provided by Subsection (b) of this section, this Act applies to the expunction of arrest records and files for a person who successfully completes a veterans treatment court program under Chapter 124, Government Code, or former law before, on, or after the effective date of this Act, regardless of when the underlying arrest occurred.

1 (b) The change in law made by this Act to Article 102.006,
2 Code of Criminal Procedure, applies to the fees charged or costs
3 assessed for an expunction order entered on or after the effective
4 date of this Act, regardless of whether the underlying arrest
5 occurred before, on, or after the effective date of this Act.

6 (c) For a person who is entitled to expunction under Article
7 55.01(a)(2)(A)(ii)(a), Code of Criminal Procedure, as amended by
8 this Act, based on a successful completion of a veterans treatment
9 court program under Chapter 124, Government Code, or former law
10 before the effective date of this Act, notwithstanding the 30-day
11 time limit provided for the court to enter an automatic order of
12 expunction under Section 1a(a-1), Article 55.02, Code of Criminal
13 Procedure, as added by this Act, the court may, with the consent of
14 the attorney representing the state, enter an order of expunction
15 for the person as soon as practicable after the court receives
16 written notice from any party to the case about the person's
17 entitlement to the expunction.

18 SECTION 6. This Act takes effect September 1, 2017.

ADOPTED

MAY 24 2017

Katay Spaw
Secretary of the Senate

By: Hinojosa

H.B. No. 322

Substitute the following for H.B. No. 322 :

By: [Signature]

C.S.H.B. No. 322

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the expunction of arrest records and files for certain
3 veterans and the waiver of fees and costs charged for the
4 expunction.

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

6 SECTION 1. Article 55.01, Code of Criminal Procedure, is
7 amended by amending Subsection (a) and adding Subsection (a-3) to
8 read as follows:

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

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

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

17 (B) convicted and subsequently:

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

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

1 (2) the person has been released and the charge, if
2 any, has not resulted in a final conviction and is no longer pending
3 and there was no court-ordered community supervision under Chapter
4 42A for the offense, unless the offense is a Class C misdemeanor,
5 provided that:

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

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

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

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

25 (c) at least three years have elapsed
26 from the date of arrest if the arrest for which the expunction was
27 sought was for an offense punishable as a felony or if there was a

1 felony charge arising out of the same transaction for which the
2 person was arrested; or

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

7 (ii) if presented at any time following the
8 arrest, was dismissed or quashed, and the court finds that the
9 indictment or information was dismissed or quashed because:

10 (a) the person completed a veterans
11 treatment court program created under Chapter 124, Government Code,
12 or former law, subject to Subsection (a-3);

13 (b) the person completed a pretrial
14 intervention program authorized under Section 76.011, Government
15 Code, other than a veterans treatment court program created under
16 Chapter 124, Government Code, or former law;

17 (c) [because] the presentment had
18 been made because of mistake, false information, or other similar
19 reason indicating absence of probable cause at the time of the
20 dismissal to believe the person committed the offense; or

21 (d) [, or because] the indictment or
22 information was void; or

23 (B) prosecution of the person for the offense for
24 which the person was arrested is no longer possible because the
25 limitations period has expired.

26 (a-3) A person is eligible under Subsection
27 (a)(2)(A)(ii)(a) for an expunction of arrest records and files only

1 if:

2 (1) the person has not previously received an
3 expunction of arrest records and files under that sub-subparagraph;
4 and

5 (2) the person submits to the court an affidavit
6 attesting to that fact.

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

10 (a-1) A trial court dismissing a case following a person's
11 successful completion of a veterans treatment court program created
12 under Chapter 124, Government Code, or former law, if the trial
13 court is a district court, or a district court in the county in
14 which the trial court is located may, with the consent of the
15 attorney representing the state, enter an order of expunction for a
16 person entitled to expunction under Article 55.01(a)(2)(A)(ii)(a)
17 not later than the 30th day after the date the court dismisses the
18 case or receives the information regarding that dismissal, as
19 applicable. Notwithstanding any other law, a court that enters an
20 order for expunction under this subsection may not charge any fee or
21 assess any cost for the expunction.

22 SECTION 3. Article 102.006(b), Code of Criminal Procedure,
23 is amended to read as follows:

24 (b) The fees under Subsection (a) shall be waived if[+
25 [~~(1)~~] the petitioner:

26 (1) seeks expunction of a criminal record that relates
27 to an arrest for an offense of which the person was acquitted, other

1 than an acquittal for an offense described by Article 55.01(c), + and

2
3 ~~[-2-]~~ the petition for expunction is filed not later
4 than the 30th day after the date of the acquittal; or

5 (2) is entitled to expunction under Article
6 55.01(a)(2)(A)(ii)(a) after successful completion of a veterans
7 treatment court program created under Chapter 124, Government Code,
8 or former law.

9 SECTION 4. Section 124.001(b), Government Code, is amended
10 to read as follows:

11 (b) If a defendant successfully completes a veterans
12 treatment court program, after notice to the attorney representing
13 the state and a hearing in the veterans treatment court at which
14 that court determines that a dismissal is in the best interest of
15 justice, the veterans treatment court shall provide to the court in
16 which the criminal case is pending information about the dismissal
17 and shall include all of the information required about the
18 defendant for a petition for expunction under Section 2(b), Article
19 55.02, Code of Criminal Procedure. The court in which the criminal
20 case is pending shall dismiss the case against the defendant and:

21 (1) if that trial court is a district court, the court
22 may, with the consent of the attorney representing the state, enter
23 an order of expunction on behalf of the defendant under Section
24 1a(a-1), Article 55.02, Code of Criminal Procedure; or

25 (2) if that trial court is not a district court, the
26 court may, with the consent of the attorney representing the state,
27 forward the appropriate dismissal and expunction information to

1 enable a district court with jurisdiction to enter an order of
2 expunction on behalf of the defendant under Section 1a(a-1),
3 Article 55.02, Code of Criminal Procedure.

4 SECTION 5. (a) Except as provided by Subsection (b) of
5 this section, this Act applies to the expunction of arrest records
6 and files for a person who successfully completes a veterans
7 treatment court program under Chapter 124, Government Code, or
8 former law before, on, or after the effective date of this Act,
9 regardless of when the underlying arrest occurred.

10 (b) The change in law made by this Act to Article 102.006,
11 Code of Criminal Procedure, applies to the fees charged or costs
12 assessed for an expunction order entered on or after the effective
13 date of this Act, regardless of whether the underlying arrest
14 occurred before, on, or after the effective date of this Act.

15 (c) For a person who is entitled to expunction under Article
16 55.01(a)(2)(A)(ii)(a), Code of Criminal Procedure, as amended by
17 this Act, based on a successful completion of a veterans treatment
18 court program under Chapter 124, Government Code, or former law
19 before the effective date of this Act, notwithstanding the 30-day
20 time limit provided for the court to enter an automatic order of
21 expunction under Section 1a(a-1), Article 55.02, Code of Criminal
22 Procedure, as added by this Act, the court may, with the consent of
23 the attorney representing the state, enter an order of expunction
24 for the person as soon as practicable after the court receives
25 written notice from any party to the case about the person's
26 entitlement to the expunction.

27 SECTION 6. This Act takes effect September 1, 2017.

FLOOR AMENDMENT NO. 1

ADOPTED

MAY 24 2017

BY:

Van Taylor

Henry Spaw
Secretary of the Senate

Amend H.B. 322 (senate committee report) by adding the following appropriately numbered SECTIONS and renumbering the subsequent SECTIONS of the bill accordingly:

SECTION __. Section 411.0728, Government Code, is amended by amending subsections (a), (c), and (d), and adding subsection (b-1) to read as follows:

(a) This section applies only to a person:

(1) who ~~[on conviction for an offense under Section 43.02, Penal Code,~~ is placed on community supervision under Chapter 42A ~~[Article 42.12]~~, Code of Criminal Procedure, after conviction for an offense under:

(A) Section 481.120, Health and Safety Code, if the offense is punishable under Subsection (b)(1);

(B) Section 481.121, Health and Safety Code, if the offense is punishable under Subsection (b)(1);

(C) Section 31.03, Penal Code, if the offense is punishable under Subsection (e)(1) or (2);

(D) Section 43.02, Penal Code; or

(E) Section 43.03(a)(2), Penal Code, if the offense is punishable as a Class A misdemeanor;[,] and

(2) with respect to whom the conviction is subsequently set aside by the court under Article 42A.701, Code of Criminal Procedure ~~[Section 20(a) of that article]~~.

(b-1) A petition under subsection (b) must assert that the person seeking an order of nondisclosure under this section has not previously received an order of nondisclosure under this section.

(c) After notice to the state, an opportunity for a hearing, a determination by the court that the person has not

1 previously received an order of nondisclosure under this
2 section, and a determination by the court that the person
3 committed the offense solely as a victim of trafficking of
4 persons and that issuance of the order is in the best interest
5 of justice, the court shall issue an order prohibiting criminal
6 justice agencies from disclosing to the public criminal history
7 record information related to the offense for which the
8 defendant was placed on community supervision as described by
9 Subsection (a) [~~under Section 43.02, Penal Code, giving rise to~~
10 ~~the community supervision~~].

11 (d) A person may petition the court that placed the person
12 on community supervision for an order of nondisclosure of
13 criminal history record information under this section only
14 after the person's conviction [~~under Section 43.02, Penal Code,~~]
15 is set aside as described by Subsection (a).

16 SECTION _____. The change in law made by this Act applies to
17 a person whose conviction for an offense is set aside under
18 Article 42A.701, Code of Criminal Procedure, on or after the
19 effective date of this Act, regardless of when the person
20 committed the offense for which the person was convicted.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 25, 2017

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB322 by Canales (Relating to the expunction of arrest records and files for certain veterans and the waiver of fees and costs charged for the expunction.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure and the Government Code to authorize the automatic expunction of arrest records and files with no assessment of fees related to expunction for a person who had a case dismissed as a result of the successful completion of a veterans court program. It is assumed the provisions of this bill would have no significant fiscal impact.

The bill would take effect September 1, 2017.

Local Government Impact

The bill would waive certain fees for expunction of records in the veterans court. There would be a revenue loss to local governments; however, fiscal impact is not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304
Comptroller of Public Accounts, 405 Department of Public Safety

LBB Staff: UP, SLE, KJo, AI, FR, WP, BM, JAW, KVe

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 19, 2017

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB322 by Canales (Relating to the expunction of arrest records and files for certain veterans and the waiver of fees and costs charged for the expunction.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure and the Government Code to authorize the automatic expunction of arrest records and files with no assessment of fees related to expunction for a person who had a case dismissed as a result of the successful completion of a veterans court program. It is assumed the provisions of this bill would have no significant fiscal impact.

The bill would take effect September 1, 2017.

Local Government Impact

The bill would waive certain fees for expunction of records in the veterans court. There would be a revenue loss to local governments; however, fiscal impact is not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304
Comptroller of Public Accounts, 405 Department of Public Safety

LBB Staff: UP, KJo, AI, FR, WP, BM, JAW, KVe

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 4, 2017

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB322 by Canales (Relating to the expunction of arrest records and files for certain veterans and the waiver of fees and costs charged for the expunction.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure and the Government Code to authorize the automatic expunction of arrest records and files with no assessment of fees related to expunction for a person who had a case dismissed as a result of the successful completion of a veterans court program. It is assumed the provisions of this bill would have no significant fiscal impact.

The bill would take effect September 1, 2017.

Local Government Impact

The bill would waive certain fees for expunction of records in the veterans court. There would be a revenue loss to local governments; however, fiscal impact is not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304
Comptroller of Public Accounts, 405 Department of Public Safety

LBB Staff: UP, KJo, AI, FR, WP, BM, JAW, KVe

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

March 13, 2017

TO: Honorable Roland Gutierrez, Chair, House Committee on Defense & Veterans' Affairs

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB322 by Canales (Relating to the automatic expunction of arrest records and files for certain veterans and the waiver of fees and costs charged for the expunction.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure and the Government Code to require the automatic expunction of arrest records and files with no assessment of fees related to expunction for a person who had a case dismissed as a result of the successful completion of a veterans court program. It is assumed the provisions of this bill would have no significant fiscal impact.

The bill would take effect September 1, 2017.

Local Government Impact

The bill would waive certain fees for expunction of records in the veterans court. There would be a revenue loss to local governments; however, fiscal impact is not anticipated to be significant.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304
Comptroller of Public Accounts, 405 Department of Public Safety

LBB Staff: UP, WP, FR, BM, AI, JAW, KVe