

**House Bill 322**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

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SECTION 1. Article 55.01, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (a-3) 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

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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 person was arrested; or

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

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

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

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

(c) [because] the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to

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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 person was arrested; or

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

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

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

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

(c) [because] the presentment had been made because of mistake, false information, or other similar reason indicating

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believe the person committed the offense; or  
(d) ~~[-or because]~~ the indictment or information was void; or  
(B) prosecution of the person for the offense for which the person was arrested is no longer possible because the limitations period has expired.

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

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

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absence of probable cause at the time of the dismissal to believe the person committed the offense; or  
(d) ~~[-or because]~~ the indictment or information was void; or  
(B) prosecution of the person for the offense for which the person was arrested is no longer possible because the limitations period has expired.

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

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

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

SECTION 2. Same as House version.

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

(b) The fees under Subsection (a) shall be waived if[~~;~~

~~(1)] the petitioner;~~

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

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

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

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).

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SECTION 3. Same as House version.

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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.

No equivalent provision.

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SECTION \_\_. Sections 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

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this section.  
(c) After notice to the state, an opportunity for a hearing, a determination by the court that the person has not previously received an order of nondisclosure under this section, and a determination by the court that the person committed the offense solely as a victim of trafficking of persons and that issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which the defendant was placed on community supervision as described by Subsection (a) [~~under Section 43.02, Penal Code, giving rise to the community supervision~~].  
(d) A person may petition the court that placed the person on community supervision for an order of nondisclosure of criminal history record information under this section only after the person's conviction [~~under Section 43.02, Penal Code,~~] is set aside as described by Subsection (a). [FA1]

SECTION \_\_. The change in law made by this Act applies to a person whose conviction for an offense is set aside under Article 42A.701, Code of Criminal Procedure, on or after the effective date of this Act, regardless of when the person committed the offense for which the person was convicted. [FA1]

SECTION 5. Same as House version.

No equivalent provision.

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

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Code, or former law before, on, or after the effective date of this Act, regardless of when the underlying arrest occurred.

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

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

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

SECTION 6. Same as House version.