By: Moody H.B. No. 1320

A BILL TO BE ENTITLED

AN ACT

relating to the operation of, participation in, and effects of successful completion of a mental health court program.

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

SECTION 1. Article 55.01, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (a-4) 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

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 mental health court program created under Chapter 125, Government Code, or former law, subject to Subsection (a-4);

(c) 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, or a mental health court program created under Chapter 125, Government Code, or former law;

(d) [~~(c)~~] 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 believe the person committed the offense; or

(e) [~~(d)~~] 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-4) A person is eligible under Subsection (a)(2)(A)(ii)(b) 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. Section 1a, Article 55.02, Code of Criminal Procedure, is amended by adding Subsection (a-2) to read as follows:

(a-2) A trial court dismissing a case following a person's successful completion of a mental health court program created under Chapter 125, 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)(b) 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.

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

(a) In addition to any other fees required by other law and except as provided by Subsections [~~Subsection~~] (b) and (b-1), a petitioner seeking expunction of a criminal record in a district court shall pay the following fees:

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

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

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

SECTION 4. Article 102.006(b), Code of Criminal Procedure, as amended by Chapters 693 (H.B. 322) and 1149 (H.B. 557), Acts of the 85th Legislature, Regular Session, 2017, is reenacted and amended to read as follows:

(b) The fees under Subsection (a) or the fee under Subsection (a-1), as applicable, shall be waived if 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 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 5. Article 102.006, Code of Criminal Procedure, is

amended by adding Subsection (b-1) to read as follows:

(b-1) The fees under Subsection (a) shall be waived if the petitioner is entitled to expunction:

(1) 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; or

(2) under Article 55.01(a)(2)(A)(ii)(b) after successful completion of a mental health court program created under Chapter 125, Government Code, or former law.

SECTION 6. Section 125.001, Government Code, is amended to read as follows:

Sec. 125.001. MENTAL HEALTH COURT PROGRAM DEFINED; PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "mental health court program" means a program that has the following essential characteristics:

(1) the integration of mental illness treatment services and mental retardation services in the processing of cases in the judicial system;

(2) the use of a nonadversarial approach involving prosecutors and defense attorneys to promote public safety and to protect the due process rights of program participants;

(3) early identification and prompt placement of eligible participants in the program;

(4) access to mental illness treatment services and mental retardation services;

(5) ongoing judicial interaction with program participants;

(6) diversion of potentially mentally ill or mentally retarded defendants to needed services as an alternative to subjecting those defendants to the criminal justice system;

(7) monitoring and evaluation of program goals and effectiveness;

(8) continuing interdisciplinary education to promote effective program planning, implementation, and operations; and

(9) development of partnerships with public agencies and community organizations, including local mental retardation authorities.

(b) If a defendant successfully completes a mental health court program, after notice to the attorney representing the state and a hearing in the mental health court at which that court determines that a dismissal is in the best interest of justice, the mental health 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-2), 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-2), Article 55.02, Code of Criminal Procedure.

SECTION 7. Chapter 125, Government Code, is amended by adding Sections 125.0025 and 125.005 to read as follows:

Sec. 125.0025. ESTABLISHMENT OF REGIONAL PROGRAM. The commissioners courts of two or more counties may elect to establish a regional mental health court program under this chapter for the participating counties.

Sec. 125.005. PROGRAM IN CERTAIN COUNTIES MANDATORY. (a) The commissioners court of a county with a population of more than 200,000 shall:

(1) establish a mental health court program under Section 125.002; and

(2) direct the judge, magistrate, or coordinator to comply with Section 121.002(c)(1).

(b) A county required under this section to establish a mental health court program shall apply for federal and state funds available to pay the costs of the program. The criminal justice division of the governor's office may assist a county in applying for federal funds as required by this subsection.

(c) Notwithstanding Subsection (a), a county is required to establish a mental health court program under this section only if:

(1) the county receives federal or state funding specifically for that purpose; and

(2) the judge, magistrate, or coordinator receives the verification described by Section 121.002(c)(2).

(d) A county that does not establish a mental health court program as required by this section and maintain the program is ineligible to receive funds for a community supervision and corrections department from the state.

SECTION 8. (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 mental health court program under Chapter 125, Government 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)(b), Code of Criminal Procedure, as amended by this Act, based on a successful completion of a mental health court program under Chapter 125, 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-2), 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 9. This Act takes effect September 1, 2019.