

By: Bowers

H.B. No. 4133

A BILL TO BE ENTITLED

AN ACT

relating to the expunction of records and files relating to a person's arrest.

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

SECTION 1. Articles 55.01(a), (b), and (c), 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~~
7 information, or complaint charging the person with the commission
8 of a misdemeanor offense based on the person's arrest or charging
9 the person with the commission of any felony offense arising out of
10 the same 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

(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, or complaint 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) 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

(d) the indictment, ~~[or]~~ information, or complaint 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.

(b) Subject ~~[Except as provided by Subsection (c) and subject]~~ to Subsection (b-1), a district court, a justice court, or a municipal court of record may expunge all records and files

relating to the arrest of a person under the procedure established under Article 55.02 if:

(1) the person is:

(A) tried for the offense for which the person was arrested;

(B) convicted of the offense; and

(C) acquitted by the court of criminal appeals or, if the period for granting a petition for discretionary review has expired, by a court of appeals; or

(2) an office of the attorney representing the state authorized by law to prosecute the offense for which the person was arrested recommends the expunction to the court before the person is tried for the offense, regardless of whether an indictment, ~~or~~ information, or complaint has been presented against the person in relation to the offense.

(c) Notwithstanding any other provision of this article, a ~~[A]~~ court may not order the expunction of records and files relating to an arrest ~~[for an offense for which a person is subsequently acquitted, whether by the trial court, a court of appeals, or the court of criminal appeals,~~ if the offense for which the person was arrested ~~[acquitted]~~ arose out of a criminal episode, as defined by Section 3.01, Penal Code, and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode.

SECTION 2. Sections 2(a) and (a-1), Article 55.02, Code of Criminal Procedure, are amended to read as follows:

(a) Except as provided by Subsection (a-1), a ~~[A]~~ person who

1 is entitled to expunction of records and files under Article
2 55.01(a)(1)(A), 55.01(a)(1)(B)(i), or 55.01(a)(2) or a person who
3 is eligible for expunction of records and files under Article
4 55.01(b) may file an ex parte petition for expunction in a district
5 court for the county in which:

6 (1) the petitioner was arrested; or

7 (2) the offense was alleged to have occurred.

8 (a-1) Except as provided by Subsection (e), if ~~[If]~~ the
9 arrest for which expunction is sought is for an offense punishable
10 by fine only~~[,]~~ and the ~~[a]~~ person ~~[who]~~ is entitled to expunction
11 of records and files under Article 55.01(a) or ~~[a person who is]~~
12 eligible for expunction of records and files under Article
13 55.01(b), ~~[may file]~~ an ex parte petition for expunction must be
14 filed in a justice court or a municipal court of record in the
15 county in which:

16 (1) the petitioner was arrested; or

17 (2) the offense was alleged to have occurred.

18 SECTION 3. Section 4, Article 55.02, Code of Criminal
19 Procedure, is amended by amending Subsections (a), (a-2), and (b)
20 and adding Subsections (a-3) and (c) to read as follows:

21 (a) If the state establishes that the person who is the
22 subject of an expunction order is still subject to conviction for an
23 offense arising out of the same criminal episode, as defined by
24 Section 3.01, Penal Code, ~~[transaction]~~ for which the person was
25 arrested because the statute of limitations has not run and there is
26 reasonable cause to believe that the state may proceed against the
27 person for the offense, the court may provide in its expunction

1 order that the law enforcement agency and the prosecuting attorney
2 responsible for investigating the offense may retain any records
3 and files that are necessary to the investigation.

4 (a-2) The ~~[In the case of a person who is the subject of an~~
5 ~~expunction order on the basis of an acquittal, the]~~ court may
6 provide in the expunction order that the law enforcement agency and
7 the prosecuting attorney retain records and files if:

8 (1) the records and files are necessary to conduct a
9 subsequent investigation and prosecution of a person other than the
10 person who is the subject of the expunction order; or

11 (2) the state establishes that the records and files
12 are necessary for use in:

13 (A) another criminal case, including a
14 prosecution, motion to adjudicate or revoke community supervision,
15 parole revocation hearing, mandatory supervision revocation
16 hearing, punishment hearing, or bond hearing; or

17 (B) a civil case, including a civil suit or suit
18 for possession of or access to a child.

19 (a-3) In the case of a person who is the subject of an
20 expunction order on the basis of actual innocence, the court shall
21 provide in the expunction order that the law enforcement agency and
22 the prosecuting attorney must retain the records and files.

23 (b) Unless the person who is the subject of the expunction
24 order is again arrested for or charged with an offense arising out
25 of the same criminal episode, as defined by Section 3.01, Penal
26 Code, [transaction] for which the person was arrested or unless the
27 court provides for the retention of records and files under

Subsection (a-1) or (a-2), the provisions of Articles 55.03 and 55.04 apply to files and records retained under this section.

(c) The provisions of Articles 55.03 and 55.04 apply to records and files retained under Subsection (a-3), except that the records and files may be used for the purpose of training attorneys and criminal justice agencies with respect to the identification and prevention of wrongful convictions.

SECTION 4. Sections 5(a), (c), and (d), Article 55.02, Code of Criminal Procedure, are amended to read as follows:

(a) Except as provided by Subsections (f) and (g), on receipt of the order, each official or agency or other governmental entity named in the order shall:

(1) return all records and files that are subject to the expunction order to the court or in cases other than those described by Section 1a, destroy ~~[if removal is impracticable, obliterate all portions of]~~ the record or file ~~[that identify the person who is the subject of the order]~~ and notify the court of its action; and

(2) delete from its public records all index references to the records and files that are subject to the expunction order.

(c) Except in the case of a person who is the subject of an expunction order based on an entitlement under Article 55.01(d) and except as provided by Subsection (g), if an order of expunction is issued under this article, the court records concerning expunction proceedings are not open for inspection by anyone except the person who is the subject of the order unless the order permits retention

1 of a record under Section 4 of this article and the person is again
2 arrested for or charged with an offense arising out of the same
3 criminal episode, as defined by Section 3.01, Penal Code,
4 [transaction] for which the person was arrested or unless the court
5 provides for the retention of records and files under Section 4(a)
6 of this article. The clerk of the court issuing the order shall
7 obliterate all public references to the proceeding and maintain the
8 files or other records in an area not open to inspection.

9 (d) Except in the case of a person who is the subject of an
10 expunction order on the basis of an acquittal or an expunction order
11 based on an entitlement under Article 55.01(d) and except as
12 provided by Subsection (g), the clerk of the court shall destroy all
13 the files or other records maintained under Subsection (c) not
14 earlier than the 180th ~~[60th]~~ day after the date the order of
15 expunction is issued or later than the first anniversary of that
16 date unless the records or files were released under Subsection
17 (b).

18 SECTION 5. This Act applies to an expunction of records and
19 files relating to any arrest occurring before, on, or after the
20 effective date of this Act.

21 SECTION 6. This Act takes effect September 1, 2019.