

By: Menéndez

S.B. No. 2396

A BILL TO BE ENTITLED

1 AN ACT

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

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

5 SECTION 1. Article 55.01, Code of Criminal Procedure, is
6 amended by amending Subsection (a) and adding Subsection (a-4) to
7 read as follows:

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

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

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

16 (B) convicted and subsequently:

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

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

24 (2) the person has been released and the charge, if

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

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

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

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

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

24 (c) at least three years have elapsed
25 from the date of arrest if the arrest for which the expunction was
26 sought was for an offense punishable as a felony or if there was a
27 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, subject to Subsection (a-3);

12 (b) the person completed a mental
13 health court program created under Chapter 125, Government Code, or
14 former law, subject to Subsection (a-4);

15 (c) the person completed a pretrial
16 intervention program authorized under Section 76.011, Government
17 Code, other than a veterans treatment court program created under
18 Chapter 124, Government Code, or former law, or a mental health
19 court program created under Chapter 125, Government Code, or former
20 law;

21 (d) [~~(c)~~] the presentment had been
22 made because of mistake, false information, or other similar reason
23 indicating absence of probable cause at the time of the dismissal to
24 believe the person committed the offense; or

25 (e) [~~(d)~~] the indictment or
26 information was void; or

27 (B) prosecution of the person for the offense for

1 which the person was arrested is no longer possible because the
2 limitations period has expired.

3 (a-4) A person is eligible under Subsection
4 (a)(2)(A)(ii)(b) for an expunction of arrest records and files only
5 if:

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

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

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

14 (a-2) A trial court dismissing a case following a person's
15 successful completion of a mental health court program created
16 under Chapter 125, Government Code, or former law, if the trial
17 court is a district court, or a district court in the county in
18 which the trial court is located may, with the consent of the
19 attorney representing the state, enter an order of expunction for a
20 person entitled to expunction under Article 55.01(a)(2)(A)(ii)(b)
21 not later than the 30th day after the date the court dismisses the
22 case or receives the information regarding that dismissal, as
23 applicable. Notwithstanding any other law, a court that enters an
24 order for expunction under this subsection may not charge any fee or
25 assess any cost for the expunction.

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

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

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

7 (2) \$1 plus postage for each certified mailing of
8 notice of the hearing date; and

9 (3) \$2 plus postage for each certified mailing of
10 certified copies of an order of expunction.

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

15 (b) The fees under Subsection (a) or the fee under
16 Subsection (a-1), as applicable, shall be waived if the petitioner
17 [~~+~~

18 [~~(1)~~] seeks expunction of a criminal record that
19 relates to an arrest for an offense of which the person was
20 acquitted, other than an acquittal for an offense described by
21 Article 55.01(c), and the petition for expunction is filed not
22 later 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 5. Article 102.006, Code of Criminal Procedure, is

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

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

4 (1) under Article 55.01(a)(2)(A)(ii)(a) after
5 successful completion of a veterans treatment court program created
6 under Chapter 124, Government Code, or former law; or

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

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

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

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

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

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

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

26 (5) ongoing judicial interaction with program
27 participants;

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

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

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

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

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

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

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

10 Sec. 125.005. PROGRAM IN CERTAIN COUNTIES MANDATORY. (a)
11 The commissioners court of a county with a population of more than
12 200,000 shall:

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

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

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

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

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

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

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

5 SECTION 8. (a) Except as provided by Subsection (b) of
6 this section, this Act applies to the expunction of arrest records
7 and files for a person who successfully completes a mental health
8 court program under Chapter 125, Government Code, or former law
9 before, on, or after the effective date of this Act, regardless of
10 when the underlying arrest occurred.

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

16 (c) For a person who is entitled to expunction under Article
17 55.01(a)(2)(A)(ii)(b), Code of Criminal Procedure, as amended by
18 this Act, based on a successful completion of a mental health court
19 program under Chapter 125, Government Code, or former law before
20 the effective date of this Act, notwithstanding the 30-day time
21 limit provided for the court to enter an automatic order of
22 expunction under Section 1a(a-2), Article 55.02, Code of Criminal
23 Procedure, as added by this Act, the court may, with the consent of
24 the attorney representing the state, enter an order of expunction
25 for the person as soon as practicable after the court receives
26 written notice from any party to the case about the person's
27 entitlement to the expunction.

1 SECTION 9. This Act takes effect September 1, 2019.