

By: Geren

H.B. No. 1326

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the automatic expunction of arrest records and files  
3 for certain public safety employees who successfully complete a  
4 public safety employees treatment court program.

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-5) 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 mental  
14 health court program created under Chapter 125, Government Code, or  
15 former law, subject to Subsection (a-4);

16 (c) the person completed a public  
17 safety employees treatment court program created under Chapter 129,  
18 Government Code, subject to Subsection (a-5);

19 (d) the person completed a pretrial  
20 intervention program authorized under Section 76.011, Government  
21 Code, other than a veterans treatment court program created under  
22 Chapter 124, Government Code, or former law, [~~or~~] a mental health  
23 court program created under Chapter 125, Government Code, or former  
24 law, or a public safety employees treatment court program created  
25 under Chapter 129, Government Code;

26 (e) [~~(d)~~] the presentment had been  
27 made because of mistake, false information, or other similar reason

1 indicating absence of probable cause at the time of the dismissal to  
2 believe the person committed the offense; or

3 (f) [~~(e)~~] the indictment or  
4 information was void; or

5 (B) prosecution of the person for the offense for  
6 which the person was arrested is no longer possible because the  
7 limitations period has expired.

8 (a-5) A person is eligible under Subsection  
9 (a)(2)(A)(ii)(c) for an expunction of arrest records and files only  
10 if:

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

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

16 SECTION 2. Section 1a, Article 55.02, Code of Criminal  
17 Procedure, is amended by adding Subsection (a-3) to read as  
18 follows:

19 (a-3) A trial court dismissing a case following a person's  
20 successful completion of a public safety employees treatment court  
21 program created under Chapter 129, Government Code, if the trial  
22 court is a district court, or a district court in the county in  
23 which the trial court is located may, with the consent of the  
24 attorney representing the state, enter an order of expunction for a  
25 person entitled to expunction under Article 55.01(a)(2)(A)(ii)(c)  
26 not later than the 30th day after the date the court dismisses the  
27 case or receives the information regarding that dismissal, as

1 applicable. Notwithstanding any other law, a court that enters an  
2 order for expunction under this subsection may not charge any fee or  
3 assess any cost for the expunction.

4 SECTION 3. Article 102.006(b-1), Code of Criminal  
5 Procedure, is amended to read as follows:

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

8 (1) under Article 55.01(a)(2)(A)(ii)(a) after  
9 successful completion of a veterans treatment court program created  
10 under Chapter 124, Government Code, or former law; ~~[or]~~

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

14 (3) under Article 55.01(a)(2)(A)(ii)(c) after  
15 successful completion of a public safety employees treatment court  
16 program created under Chapter 129, Government Code.

17 SECTION 4. Section 129.002(b), Government Code, is amended  
18 to read as follows:

19 (b) If a defendant successfully completes a public safety  
20 employees treatment court program, after notice to the attorney  
21 representing the state and a hearing in the public safety employees  
22 treatment court at which that court determines that a dismissal is  
23 in the best interest of justice, the public safety employees  
24 treatment court shall provide to the court in which the criminal  
25 case is pending information about the dismissal and shall include  
26 all of the information required about the defendant for a petition  
27 for expunction under Section 2(b), Article 55.02, Code of Criminal

1 Procedure. The court in which the criminal case is pending shall  
2 dismiss the case against the defendant and:

3 (1) if that trial court is a district court, the court  
4 may, with the consent of the attorney representing the state, enter  
5 an order of expunction on behalf of the defendant under Section  
6 1a(a-3), Article 55.02, Code of Criminal Procedure; or

7 (2) if that trial court is not a district court, the  
8 court may, with the consent of the attorney representing the state,  
9 forward the appropriate dismissal and expunction information to  
10 enable a district court with jurisdiction to enter an order of  
11 expunction on behalf of the defendant under Section 1a(a-3),  
12 Article 55.02, Code of Criminal Procedure.

13 SECTION 5. (a) Except as provided by Subsection (b) of this  
14 section, this Act applies to the expunction of arrest records and  
15 files for a person who successfully completes a public safety  
16 employees treatment court program under Chapter 129, Government  
17 Code, before, on, or after the effective date of this Act,  
18 regardless of when the underlying arrest occurred.

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

24 (c) For a person who is entitled to expunction under Article  
25 55.01(a)(2)(A)(ii)(c), Code of Criminal Procedure, as amended by  
26 this Act, based on a successful completion of a public safety  
27 employees treatment court program under Chapter 129, Government

1 Code, before the effective date of this Act, notwithstanding the  
2 30-day time limit provided for the court to enter an automatic order  
3 of expunction under Section 1a(a-3), Article 55.02, Code of  
4 Criminal Procedure, as added by this Act, the court may, with the  
5 consent of the attorney representing the state, enter an order of  
6 expunction for the person as soon as practicable after the court  
7 receives written notice from any party to the case about the  
8 person's entitlement to the expunction.

9 SECTION 6. This Act takes effect September 1, 2021.