

By: King

S.B. No. 1020

A BILL TO BE ENTITLED

AN ACT

relating to the automatic expunction of arrest records and files for certain public safety employees who successfully complete a public safety employees treatment 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-5) 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);

(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

1 (C) convicted of an offense committed before  
2 September 1, 2021, under Section 46.02(a), Penal Code, as that  
3 section existed before that date; or

4 (2) the person has been released and the charge, if  
5 any, has not resulted in a final conviction and is no longer pending  
6 and there was no court-ordered community supervision under Chapter  
7 42A for the offense, unless the offense is a Class C misdemeanor,  
8 provided that:

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

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

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

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

1 (c) at least three years have elapsed  
2 from the date of arrest if the arrest for which the expunction was  
3 sought was for an offense punishable as a felony or if there was a  
4 felony charge arising out of the same transaction for which the  
5 person was arrested; or

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

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

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

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

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

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

1 under Chapter 129, Government Code;

2 (e) [~~(d)~~] the presentment had been  
3 made because of mistake, false information, or other similar reason  
4 indicating absence of probable cause at the time of the dismissal to  
5 believe the person committed the offense; or

6 (f) [~~(e)~~] the indictment or  
7 information was void; or

8 (B) prosecution of the person for the offense for  
9 which the person was arrested is no longer possible because the  
10 limitations period has expired.

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

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

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

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

22 (a-3) A trial court dismissing a case following a person's  
23 successful completion of a public safety employees treatment court  
24 program created under Chapter 129, Government Code, if the trial  
25 court is a district court, or a district court in the county in  
26 which the trial court is located may, with the consent of the  
27 attorney representing the state, enter an order of expunction for a

1 person entitled to expunction under Article 55.01(a)(2)(A)(ii)(c)  
2 not later than the 30th day after the date the court dismisses the  
3 case or receives the information regarding that dismissal, as  
4 applicable. Notwithstanding any other law, a court that enters an  
5 order for expunction under this subsection may not charge any fee or  
6 assess any cost for the expunction.

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

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

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

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

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

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

22 (b) If a defendant successfully completes a public safety  
23 employees treatment court program, after notice to the attorney  
24 representing the state and a hearing in the public safety employees  
25 treatment court at which that court determines that a dismissal is  
26 in the best interest of justice, the public safety employees  
27 treatment court shall provide to the court in which the criminal

1 case is pending information about the dismissal and shall include  
2 all of the information required about the defendant for a petition  
3 for expunction under Section 2(b), Article 55.02, Code of Criminal  
4 Procedure. The court in which the criminal case is pending shall  
5 dismiss the case against the defendant and:

6 (1) if that trial court is a district court, the court  
7 may, with the consent of the attorney representing the state, enter  
8 an order of expunction on behalf of the defendant under Section  
9 1a(a-3), Article 55.02, Code of Criminal Procedure; or

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

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

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

27 (c) For a person who is entitled to expunction under Article

1 55.01(a)(2)(A)(ii)(c), Code of Criminal Procedure, as amended by  
2 this Act, based on a successful completion of a public safety  
3 employees treatment court program under Chapter 129, Government  
4 Code, before the effective date of this Act, notwithstanding the  
5 30-day time limit provided for the court to enter an automatic order  
6 of expunction under Section 1a(a-3), Article 55.02, Code of  
7 Criminal Procedure, as added by this Act, the court may, with the  
8 consent of the attorney representing the state, enter an order of  
9 expunction for the person as soon as practicable after the court  
10 receives written notice from any party to the case about the  
11 person's entitlement to the expunction.

12 SECTION 6. This Act takes effect September 1, 2023.