

By: Dutton

H.B. No. 293

A BILL TO BE ENTITLED

AN ACT

relating to the automatic expunction of criminal records.

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

SECTION 1. Article 55.01(a), Code of Criminal Procedure, is 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) [~~of this section~~]; or

(B) convicted and subsequently pardoned; or

(2) either [~~each~~] of the following conditions exists [~~exist~~]:

(A) an indictment, complaint, or information charging the person with commission of an offense [~~a felony~~] has not been presented against the person for an offense arising out of the transaction for which the person was arrested before the second anniversary of the date of the arrest; or

(B) [~~if~~] if an indictment, complaint, or information charging the person with commission of an offense [~~a felony~~] was presented, the indictment, complaint, or information

1 has been dismissed or quashed [~~, and:~~

2 [~~(i) the limitations period expired before~~
3 ~~the date on which a petition for expunction was filed under Article~~
4 ~~55.02; or~~

5 [~~(ii) the court finds that the indictment~~
6 ~~or information was dismissed or quashed because the presentment had~~
7 ~~been made because of mistake, false information, or other similar~~
8 ~~reason indicating absence of probable cause at the time of the~~
9 ~~dismissal to believe the person committed the offense or because it~~
10 ~~was void;~~

11 [~~(B) the person has been released and the charge,~~
12 ~~if any, has not resulted in a final conviction and is no longer~~
13 ~~pending and there was no court ordered community supervision under~~
14 ~~Article 42.12 for any offense other than a Class C misdemeanor; and~~

15 [~~(C) the person has not been convicted of a~~
16 ~~felony in the five years preceding the date of the arrest].~~

17 SECTION 2. Section 1, Article 55.02, Code of Criminal
18 Procedure, is amended to read as follows:

19 Sec. 1. (a) The [~~At the request of the defendant and after~~
20 ~~notice to the state, the]~~ trial court [~~presiding over the case in~~
21 ~~which the defendant was acquitted, if the trial court is a district~~
22 ~~court, or a district court in the county in which the trial court is~~
23 ~~located]~~ shall enter an order of expunction for a person entitled to
24 expunction because:

- 25 (1) the person was acquitted;
26 (2) the person was pardoned; or
27 (3) the offense was dismissed [~~under Article~~

1 ~~55.01(a)(1)(A) not later than the 30th day after the date of the~~
2 ~~acquittal. Upon acquittal, the trial court shall advise the~~
3 ~~defendant of the right to expunction. The defendant shall provide~~
4 ~~to the district court all of the information required in a petition~~
5 ~~for expunction under Section 2(b). The attorney for the defendant~~
6 ~~in the case in which the defendant was acquitted, if the defendant~~
7 ~~was represented by counsel, or the attorney for the state, if the~~
8 ~~defendant was not represented by counsel, shall prepare the order~~
9 ~~for the court's signature].~~

10 (b) The attorney representing the state whose office would
11 have prosecuted the offense shall bring a motion for expunction for
12 a person who was arrested but against whom an indictment,
13 complaint, or information is not filed before the second
14 anniversary of the date of arrest.

15 (c) The court shall enter an order of expunction under this
16 section not later than the 30th day after the date of acquittal,
17 pardon, dismissal, or filing of the motion by the attorney
18 representing the state. The court shall include in the order a
19 listing of each official, agency, or other entity of this state or
20 political subdivision of this state and each private entity that
21 there is reason to believe has any record or file that is subject to
22 the order.

23 SECTION 3. Section 2a, Article 55.02, Code of Criminal
24 Procedure, is amended by adding Subsection (e) to read as follows:

25 (e) The director of the Department of Public Safety or the
26 director's authorized representative may file on behalf of a person
27 under this section the application described by Subsection (a).

1 The application must be verified and must include all of the
2 information otherwise required of an application under this
3 section, including the information described by Subsections (c)(1)
4 and (3). The director of the Department of Public Safety or the
5 director's authorized representative shall forward a copy of the
6 application to the district court for the county in which the
7 person resides and shall request the court to enter an order
8 directing expunction based on an entitlement to expunction under
9 Article 55.01(d). On receipt of a request under this subsection,
10 the court shall, without holding a hearing on the matter, enter a
11 final order directing expunction.

12 SECTION 4. Sections 3(a), (c), and (d), Article 55.02, Code
13 of Criminal Procedure, are amended to read as follows:

14 (a) In an order of expunction issued under this article, the
15 court shall require any state agency that sent information
16 concerning the arrest to a central federal depository to request
17 the depository to return all records and files subject to the order
18 of expunction. A [The] person who is the subject of an [the]
19 expunction order under Section 2a, or an agency protesting the
20 expunction, may appeal the court's decision in the same manner as in
21 other civil cases.

22 (c) When the order of expunction is final, the clerk of the
23 court shall send a certified copy of the order to the Crime Records
24 Service of the Department of Public Safety and to each official or
25 agency or other governmental entity of this state or of any
26 political subdivision of this state named in [designated by the
27 person who is the subject of] the order. The certified copy of the

1 order must be sent by secure electronic mail, electronic
2 transmission, or facsimile transmission or otherwise by certified
3 mail, return receipt requested. In sending the order to a
4 governmental entity named in the order [~~designated by the person~~],
5 the clerk may elect to substitute hand delivery for certified mail
6 under this subsection, but the clerk must receive a receipt for that
7 hand-delivered order.

8 (d) Any returned receipts received by the clerk from
9 [~~notices of the hearing and~~] copies of the order shall be maintained
10 in the file on the proceedings under this chapter.

11 SECTION 5. Section 4, Article 55.02, Code of Criminal
12 Procedure, is amended to read as follows:

13 Sec. 4. (a) If the state establishes that the person who is
14 the subject of an expunction order is still subject to conviction
15 for an offense arising out of the transaction for which the person
16 was arrested because the statute of limitations has not run and
17 there is reasonable cause to believe that the state may proceed
18 against the person for the offense, the court may provide in its
19 order that the law enforcement agency and the prosecuting attorney
20 responsible for investigating the offense may retain any records
21 and files that are necessary to the investigation.

22 (b) In the case of a person who is the subject of an
23 expunction order on the basis of an acquittal, the court may provide
24 in the expunction order that the law enforcement agency and the
25 prosecuting attorney retain records and files if:

26 (1) the records and files are necessary to conduct a
27 subsequent investigation and prosecution of a person other than the

1 person who is the subject of the expunction order; or

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

4 (A) another criminal case, including a
5 prosecution, motion to adjudicate or revoke community supervision,
6 parole revocation hearing, mandatory supervision revocation
7 hearing, punishment hearing, or bond hearing; or

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

10 (c) [~~(b)~~] Unless the person who is the subject of the
11 expunction order is again arrested for or charged with an offense
12 arising out of the transaction for which the person was arrested or
13 unless the court provides for the retention of records and files
14 under Subsection (b), [~~(a) of this section, the provisions of~~]
15 Articles 55.03 and 55.04 [~~of this code~~] apply to files and records
16 retained under this section.

17 SECTION 6. Section 5(c), Article 55.02, Code of Criminal
18 Procedure, is amended to read as follows:

19 (c) Except in the case of a person who is the subject of an
20 expunction order based on an entitlement under Article 55.01(d) and
21 except as provided by Subsection (g), if an order of expunction is
22 issued under this article, the court records concerning expunction
23 proceedings are not open for inspection by anyone except the person
24 who is the subject of the order unless the order permits retention
25 of a record under Section 4(a) [~~4 of this article~~] and the person is
26 again arrested for or charged with an offense arising out of the
27 transaction for which the person was arrested or unless the court

1 provides for the retention of records and files under Section 4(b)
2 [~~4(a) of this article~~]. The clerk of the court issuing the order
3 shall obliterate all public references to the proceeding and
4 maintain the files or other records in an area not open to
5 inspection.

6 SECTION 7. The following provisions of the Code of Criminal
7 Procedure are repealed:

- 8 (1) Subsection (a-1), Article 55.01;
- 9 (2) Section 2, Article 55.02;
- 10 (3) Article 55.05; and
- 11 (4) Article 102.006.

12 SECTION 8. (a) This Act applies only to the expunction of
13 arrest records related to:

- 14 (1) a criminal offense for which an acquittal occurred
15 on or after the effective date of this Act;
- 16 (2) a charge for an offense that was dismissed on or
17 after the effective date of this Act; or
- 18 (3) an arrest made on or after the effective date of
19 this Act.

20 (b) Expunction for an acquittal, dismissal, or arrest that
21 occurred before the effective date of this Act is governed by the
22 law in effect at that time, and the former law is continued in
23 effect for that purpose.

24 SECTION 9. This Act takes effect September 1, 2009.