

1-1 By: Canales, et al. (Senate Sponsor - Hinojosa) H.B. No. 322
1-2 (In the Senate - Received from the House April 18, 2017;
1-3 May 1, 2017, read first time and referred to Committee on Criminal
1-4 Justice; May 21, 2017, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 May 21, 2017, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10			X	
1-11			X	
1-12	X			
1-13			X	
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR H.B. No. 322 By: Whitmire

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the expunction of arrest records and files for certain
1-22 veterans and the waiver of fees and costs charged for the
1-23 expunction.

1-24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-25 SECTION 1. Article 55.01, Code of Criminal Procedure, is
1-26 amended by amending Subsection (a) and adding Subsection (a-3) to
1-27 read as follows:

1-28 (a) A person who has been placed under a custodial or
1-29 noncustodial arrest for commission of either a felony or
1-30 misdemeanor is entitled to have all records and files relating to
1-31 the arrest expunged if:

1-32 (1) the person is tried for the offense for which the
1-33 person was arrested and is:

1-34 (A) acquitted by the trial court, except as
1-35 provided by Subsection (c); or

1-36 (B) convicted and subsequently:

1-37 (i) pardoned for a reason other than that
1-38 described by Subparagraph (ii); or

1-39 (ii) pardoned or otherwise granted relief
1-40 on the basis of actual innocence with respect to that offense, if
1-41 the applicable pardon or court order clearly indicates on its face
1-42 that the pardon or order was granted or rendered on the basis of the
1-43 person's actual innocence; or

1-44 (2) the person has been released and the charge, if
1-45 any, has not resulted in a final conviction and is no longer pending
1-46 and there was no court-ordered community supervision under Chapter
1-47 42A for the offense, unless the offense is a Class C misdemeanor,
1-48 provided that:

1-49 (A) regardless of whether any statute of
1-50 limitations exists for the offense and whether any limitations
1-51 period for the offense has expired, an indictment or information
1-52 charging the person with the commission of a misdemeanor offense
1-53 based on the person's arrest or charging the person with the
1-54 commission of any felony offense arising out of the same
1-55 transaction for which the person was arrested:

1-56 (i) has not been presented against the
1-57 person at any time following the arrest, and:

1-58 (a) at least 180 days have elapsed
1-59 from the date of arrest if the arrest for which the expunction was
1-60 sought was for an offense punishable as a Class C misdemeanor and if

2-1 there was no felony charge arising out of the same transaction for
 2-2 which the person was arrested;

2-3 (b) at least one year has elapsed from
 2-4 the date of arrest if the arrest for which the expunction was sought
 2-5 was for an offense punishable as a Class B or A misdemeanor and if
 2-6 there was no felony charge arising out of the same transaction for
 2-7 which the person was arrested;

2-8 (c) at least three years have elapsed
 2-9 from the date of arrest if the arrest for which the expunction was
 2-10 sought was for an offense punishable as a felony or if there was a
 2-11 felony charge arising out of the same transaction for which the
 2-12 person was arrested; or

2-13 (d) the attorney representing the
 2-14 state certifies that the applicable arrest records and files are
 2-15 not needed for use in any criminal investigation or prosecution,
 2-16 including an investigation or prosecution of another person; or

2-17 (ii) if presented at any time following the
 2-18 arrest, was dismissed or quashed, and the court finds that the
 2-19 indictment or information was dismissed or quashed because:

2-20 (a) the person completed a veterans
 2-21 treatment court program created under Chapter 124, Government Code,
 2-22 or former law, subject to Subsection (a-3);

2-23 (b) the person completed a pretrial
 2-24 intervention program authorized under Section 76.011, Government
 2-25 Code, other than a veterans treatment court program created under
 2-26 Chapter 124, Government Code, or former law;

2-27 (c) ~~[because]~~ the presentment had
 2-28 been made because of mistake, false information, or other similar
 2-29 reason indicating absence of probable cause at the time of the
 2-30 dismissal to believe the person committed the offense; or

2-31 (d) ~~[, or because]~~ the indictment or
 2-32 information was void; or

2-33 (B) prosecution of the person for the offense for
 2-34 which the person was arrested is no longer possible because the
 2-35 limitations period has expired.

2-36 (a-3) A person is eligible under Subsection
 2-37 (a)(2)(A)(ii)(a) for an expunction of arrest records and files only
 2-38 if:

2-39 (1) the person has not previously received an
 2-40 expunction of arrest records and files under that sub-subparagraph;
 2-41 and

2-42 (2) the person submits to the court an affidavit
 2-43 attesting to that fact.

2-44 SECTION 2. Section 1a, Article 55.02, Code of Criminal
 2-45 Procedure, is amended by adding Subsection (a-1) to read as
 2-46 follows:

2-47 (a-1) A trial court dismissing a case following a person's
 2-48 successful completion of a veterans treatment court program created
 2-49 under Chapter 124, Government Code, or former law, if the trial
 2-50 court is a district court, or a district court in the county in
 2-51 which the trial court is located may, with the consent of the
 2-52 attorney representing the state, enter an order of expunction for a
 2-53 person entitled to expunction under Article 55.01(a)(2)(A)(ii)(a)
 2-54 not later than the 30th day after the date the court dismisses the
 2-55 case or receives the information regarding that dismissal, as
 2-56 applicable. Notwithstanding any other law, a court that enters an
 2-57 order for expunction under this subsection may not charge any fee or
 2-58 assess any cost for the expunction.

2-59 SECTION 3. Article 102.006(b), Code of Criminal Procedure,
 2-60 is amended to read as follows:

2-61 (b) The fees under Subsection (a) shall be waived if ~~[+~~
 2-62 ~~[-1-]~~ the petitioner:
 2-63 (1) seeks expunction of a criminal record that relates
 2-64 to an arrest for an offense of which the person was acquitted, other
 2-65 than an acquittal for an offense described by Article 55.01(c), ~~[+]~~
 2-66 and

2-67 ~~[-2-]~~ the petition for expunction is filed not later
 2-68 than the 30th day after the date of the acquittal; or
 2-69 (2) is entitled to expunction under Article

3-1 55.01(a)(2)(A)(ii)(a) after successful completion of a veterans
3-2 treatment court program created under Chapter 124, Government Code,
3-3 or former law.

3-4 SECTION 4. Section 124.001(b), Government Code, is amended
3-5 to read as follows:

3-6 (b) If a defendant successfully completes a veterans
3-7 treatment court program, after notice to the attorney representing
3-8 the state and a hearing in the veterans treatment court at which
3-9 that court determines that a dismissal is in the best interest of
3-10 justice, the veterans treatment court shall provide to the court in
3-11 which the criminal case is pending information about the dismissal
3-12 and shall include all of the information required about the
3-13 defendant for a petition for expunction under Section 2(b), Article
3-14 55.02, Code of Criminal Procedure. The court in which the criminal
3-15 case is pending shall dismiss the case against the defendant and:

3-16 (1) if that trial court is a district court, the court
3-17 may, with the consent of the attorney representing the state, enter
3-18 an order of expunction on behalf of the defendant under Section
3-19 1a(a-1), Article 55.02, Code of Criminal Procedure; or

3-20 (2) if that trial court is not a district court, the
3-21 court may, with the consent of the attorney representing the state,
3-22 forward the appropriate dismissal and expunction information to
3-23 enable a district court with jurisdiction to enter an order of
3-24 expunction on behalf of the defendant under Section 1a(a-1),
3-25 Article 55.02, Code of Criminal Procedure.

3-26 SECTION 5. (a) Except as provided by Subsection (b) of
3-27 this section, this Act applies to the expunction of arrest records
3-28 and files for a person who successfully completes a veterans
3-29 treatment court program under Chapter 124, Government Code, or
3-30 former law before, on, or after the effective date of this Act,
3-31 regardless of when the underlying arrest occurred.

3-32 (b) The change in law made by this Act to Article 102.006,
3-33 Code of Criminal Procedure, applies to the fees charged or costs
3-34 assessed for an expunction order entered on or after the effective
3-35 date of this Act, regardless of whether the underlying arrest
3-36 occurred before, on, or after the effective date of this Act.

3-37 (c) For a person who is entitled to expunction under Article
3-38 55.01(a)(2)(A)(ii)(a), Code of Criminal Procedure, as amended by
3-39 this Act, based on a successful completion of a veterans treatment
3-40 court program under Chapter 124, Government Code, or former law
3-41 before the effective date of this Act, notwithstanding the 30-day
3-42 time limit provided for the court to enter an automatic order of
3-43 expunction under Section 1a(a-1), Article 55.02, Code of Criminal
3-44 Procedure, as added by this Act, the court may, with the consent of
3-45 the attorney representing the state, enter an order of expunction
3-46 for the person as soon as practicable after the court receives
3-47 written notice from any party to the case about the person's
3-48 entitlement to the expunction.

3-49 SECTION 6. This Act takes effect September 1, 2017.

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