

1 AN ACT

2 relating to the expunction of records and files relating to a
3 person's arrest.

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 Subsections (a), (a-1), (b), and (c) and adding
7 Subsection (a-2) to 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) [~~of this section~~]; 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 Article
3 42.12 for the offense, unless the offense is a Class C misdemeanor,
4 provided that [each of the following conditions exist]:

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) [for an offense arising out of the
7 transaction for which the person was arrested or,] if [an
8 indictment or information charging the person with commission of a
9 felony was] presented at any time following the arrest, was[, the
10 indictment or information has been] dismissed or quashed, and[+

11 [+ (i) the limitations period expired before
12 the date on which a petition for expunction was filed under Article
13 55.02, or

14 [+ (ii)] the court finds that the indictment
15 or information was dismissed or quashed because the person
16 completed a pretrial intervention program authorized under Section
17 76.011, Government Code, [or] because the presentment had been made
18 because of mistake, false information, or other similar reason
19 indicating absence of probable cause at the time of the dismissal to
20 believe the person committed the offense, or because the indictment
21 or information [it] was void; or

22 (B) prosecution of the person for the offense for
23 which the person was arrested is no longer possible because the
24 limitations period has expired [the person has been released and
25 the charge, if any, has not resulted in a final conviction and is no
26 longer pending and there was no court ordered community supervision
27 under Article 42.12 for any offense other than a Class C

1 ~~misdemeanor, and~~

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

4 (a-1) Notwithstanding any other provision of this article,
5 a person may not expunge records and files relating to an arrest
6 that occurs pursuant to a warrant issued under Section 21, Article
7 42.12 [Subsection (a)(2)(C), a person's conviction of a felony in
8 the five years preceding the date of the arrest does not affect the
9 person's entitlement to expunction for purposes of an ex parte
10 petition filed on behalf of the person by the director of the
11 Department of Public Safety under Section 2(c), Article 55.02].

12 (a-2) Notwithstanding any other provision of this article,
13 a person who intentionally or knowingly absconds from the
14 jurisdiction after being released under Chapter 17 following an
15 arrest is not eligible under Subsection (a)(2)(A)(i)(a), (b), or
16 (c) or Subsection (a)(2)(B) for an expunction of the records and
17 files relating to that arrest.

18 (b) Except as provided by Subsection (c) [~~of this section~~],
19 a district court may expunge all records and files relating to the
20 arrest of a person who has been arrested for commission of a felony
21 or misdemeanor under the procedure established under Article 55.02
22 [~~of this code~~] if:

23 (1) the person is:

24 (A) [~~1~~] tried for the offense for which the
25 person was arrested;

26 (B) [~~2~~] convicted of the offense; and

27 (C) [~~3~~] acquitted by the court of criminal

1 appeals or, if the period for granting a petition for discretionary
2 review has expired, by a court of appeals; or

3 (2) an office of the attorney representing the state
4 authorized by law to prosecute the offense for which the person was
5 arrested recommends the expunction to the appropriate district
6 court before the person is tried for the offense, regardless of
7 whether an indictment or information has been presented against the
8 person in relation to the offense.

9 (c) A court may not order the expunction of records and
10 files relating to an arrest for an offense for which a person is
11 subsequently acquitted, whether by the trial court, a court of
12 appeals, or the court of criminal appeals, if the offense for which
13 the person was acquitted arose out of a criminal episode, as defined
14 by Section 3.01, Penal Code, and the person was convicted of or
15 remains subject to prosecution for at least one other offense
16 occurring during the criminal episode.

17 SECTION 2. Article 55.02, Code of Criminal Procedure, is
18 amended by amending Section 1 and adding Section 1a to read as
19 follows:

20 Sec. 1. At the request of the defendant and after notice to
21 the state, the trial court presiding over the case in which the
22 defendant was acquitted, if the trial court is a district court, or
23 a district court in the county in which the trial court is located
24 shall enter an order of expunction for a person entitled to
25 expunction under Article 55.01(a)(1)(A) [~~article 55.01(a)(1)(a)~~]
26 not later than the 30th day after the date of the acquittal. Upon
27 acquittal, the trial court shall advise the defendant of the right

1 to expunction. The defendant shall provide to the district court
2 all of the information required in a petition for expunction under
3 Section 2(b). The attorney for the defendant in the case in which
4 the defendant was acquitted, if the defendant was represented by
5 counsel, or the attorney for the state, if the defendant was not
6 represented by counsel, shall prepare the order for the court's
7 signature.

8 Sec. 1a. (a) The trial court presiding over a case in which
9 a defendant is convicted and subsequently granted relief or
10 pardoned on the basis of actual innocence of the offense of which
11 the defendant was convicted, if the trial court is a district court,
12 or a district court in the county in which the trial court is
13 located shall enter an order of expunction for a person entitled to
14 expunction under Article 55.01(a)(1)(B)(ii) not later than the 30th
15 day after the date the court receives notice of the pardon or other
16 grant of relief. The person shall provide to the district court all
17 of the information required in a petition for expunction under
18 Section 2(b).

19 (b) The attorney for the state shall:

20 (1) prepare an expunction order under this section for
21 the court's signature; and

22 (2) notify the Texas Department of Criminal Justice if
23 the person is in the custody of the department.

24 (c) The court shall include in an expunction order under
25 this section a listing of each official, agency, or other entity of
26 this state or political subdivision of this state and each private
27 entity that there is reason to believe has any record or file that

1 is subject to the order. The court shall also provide in an
2 expunction order under this section that:

3 (1) the Texas Department of Criminal Justice shall
4 send to the court the documents delivered to the department under
5 Section 8(a), Article 42.09; and

6 (2) the Department of Public Safety and the Texas
7 Department of Criminal Justice shall delete or redact, as
8 appropriate, from their public records all index references to the
9 records and files that are subject to the expunction order.

10 (d) The court shall retain all documents sent to the court
11 under Subsection (c)(1) until the statute of limitations has run
12 for any civil case or proceeding relating to the wrongful
13 imprisonment of the person subject to the expunction order.

14 SECTION 3. Section 2(a), Article 55.02, Code of Criminal
15 Procedure, is amended to read as follows:

16 (a) A person who is entitled to expunction of records and
17 files under Article 55.01(a)(1)(B)(i) or 55.01(a)(2) [~~55.01(a)~~] or
18 a person who is eligible for expunction of records and files under
19 Article 55.01(b) may file an ex parte petition for expunction in a
20 district court for the county in which:

- 21 (1) the petitioner was arrested; or
22 (2) the offense was alleged to have occurred.

23 SECTION 4. Section 3(c), Article 55.02, Code of Criminal
24 Procedure, is amended to read as follows:

25 (c) When the order of expunction is final, the clerk of the
26 court shall send a certified copy of the order to the Crime Records
27 Service of the Department of Public Safety and to each official or

1 agency or other governmental entity of this state or of any
2 political subdivision of this state named in [~~designated by the~~
3 ~~person who is the subject of~~] the order. The certified copy of the
4 order must be sent by secure electronic mail, electronic
5 transmission, or facsimile transmission or otherwise by certified
6 mail, return receipt requested. In sending the order to a
7 governmental entity named in the order [~~designated by the person~~],
8 the clerk may elect to substitute hand delivery for certified mail
9 under this subsection, but the clerk must receive a receipt for that
10 hand-delivered order.

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 expunction order that the law enforcement agency and the
20 prosecuting attorney responsible for investigating the offense may
21 retain any records and files that are necessary to the
22 investigation.

23 (a-1) The court shall provide in its expunction order that
24 the applicable law enforcement agency and prosecuting attorney may
25 retain the arrest records and files of any person who becomes
26 entitled to an expunction of those records and files based on the
27 expiration of a period described by Article 55.01(a)(2)(A)(i)(a),

1 (b), or (c), but without the certification of the prosecuting
2 attorney as described by Article 55.01(a)(2)(A)(i)(d).

3 (a-2) In the case of a person who is the subject of an
4 expunction order on the basis of an acquittal, the court may provide
5 in the expunction order that the law enforcement agency and the
6 prosecuting attorney retain records and files if:

7 (1) the records and files are necessary to conduct a
8 subsequent investigation and prosecution of a person other than the
9 person who is the subject of the expunction order; or

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

12 (A) another criminal case, including a
13 prosecution, motion to adjudicate or revoke community supervision,
14 parole revocation hearing, mandatory supervision revocation
15 hearing, punishment hearing, or bond hearing; or

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

18 (b) Unless the person who is the subject of the expunction
19 order is again arrested for or charged with an offense arising out
20 of the transaction for which the person was arrested or unless the
21 court provides for the retention of records and files under
22 Subsection (a-1) or (a-2) [~~(a) of this section~~], the provisions of
23 Articles 55.03 and 55.04 [~~of this code~~] apply to files and records
24 retained under this section.

25 SECTION 6. Section 5(a), Article 55.02, Code of Criminal
26 Procedure, is amended to read as follows:

27 (a) Except as provided by Subsections (f) and (g), on

1 receipt of the order, each official or agency or other governmental
2 entity named in the order shall:

3 (1) return all records and files that are subject to
4 the expunction order to the court or in cases other than those
5 described by Section 1a, if removal is impracticable, obliterate
6 all portions of the record or file that identify the person who is
7 the subject of the order and notify the court of its action; and

8 (2) delete from its public records all index
9 references to the records and files that are subject to the
10 expunction order.

11 SECTION 7. This Act applies to an expunction of arrest
12 records and files for any criminal offense:

13 (1) that occurred before, on, or after the effective
14 date of this Act; or

15 (2) for which a pardon or other relief on the basis of
16 actual innocence was granted before, on, or after the effective
17 date of this Act.

18 SECTION 8. This Act takes effect September 1, 2011.

Rand Sisk
President of the Senate

Joe Straus
Speaker of the House

I certify that H.B. No. 351 was passed by the House on May 12, 2011, by the following vote: Yeas 141, Nays 2, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 351 on May 27, 2011, by the following vote: Yeas 138, Nays 0, 3 present, not voting.

Robert Harvey
Chief Clerk of the House

I certify that H.B. No. 351 was passed by the Senate, with amendments, on May 25, 2011, by the following vote: Yeas 31, Nays 0.

Latelye Shaw
Secretary of the Senate

APPROVED: 17 JUN '11
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

4pm O'CLOCK

JUN 17 2011

Boyan R. R. R.
Secretary of State