

AN ACT

relating to the expunction of arrest records and files for certain veterans and the waiver of fees and costs charged for the expunction and to the eligibility of certain victims of trafficking of persons for an order of nondisclosure.

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-3) 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); or

(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

1 person's actual innocence; or

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

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

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

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

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

26 (c) at least three years have elapsed
27 from the date of arrest if the arrest for which the expunction was

1 sought was for an offense punishable as a felony or if there was a
2 felony charge arising out of the same transaction for which the
3 person was arrested; or

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

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

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

14 (b) the person completed a pretrial
15 intervention program authorized under Section 76.011, Government
16 Code, other than a veterans treatment court program created under
17 Chapter 124, Government Code, or former law;

18 (c) [~~because~~] the presentment had
19 been made because of mistake, false information, or other similar
20 reason indicating absence of probable cause at the time of the
21 dismissal to believe the person committed the offense; or

22 (d) [~~or because~~] the indictment or
23 information was void; or

24 (B) prosecution of the person for the offense for
25 which the person was arrested is no longer possible because the
26 limitations period has expired.

27 (a-3) A person is eligible under Subsection

1 (a)(2)(A)(ii)(a) for an expunction of arrest records and files only
2 if:

3 (1) the person has not previously received an
4 expunction of arrest records and files under that sub-subparagraph;
5 and

6 (2) the person submits to the court an affidavit
7 attesting to that fact.

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

11 (a-1) A trial court dismissing a case following a person's
12 successful completion of a veterans treatment court program created
13 under Chapter 124, Government Code, or former law, if the trial
14 court is a district court, or a district court in the county in
15 which the trial court is located may, with the consent of the
16 attorney representing the state, enter an order of expunction for a
17 person entitled to expunction under Article 55.01(a)(2)(A)(ii)(a)
18 not later than the 30th day after the date the court dismisses the
19 case or receives the information regarding that dismissal, as
20 applicable. Notwithstanding any other law, a court that enters an
21 order for expunction under this subsection may not charge any fee or
22 assess any cost for the expunction.

23 SECTION 3. Article 102.006(b), Code of Criminal Procedure,
24 is amended to read as follows:

25 (b) The fees under Subsection (a) shall be waived if[+
26 [~~1~~] the petitioner:

27 (1) seeks expunction of a criminal record that relates

1 to an arrest for an offense of which the person was acquitted, other
2 than an acquittal for an offense described by Article 55.01(c), ~~[+]~~
3 and

4 ~~[(2)]~~ the petition for expunction is filed not later
5 than the 30th day after the date of the acquittal; or

6 (2) is entitled to expunction under Article
7 55.01(a)(2)(A)(ii)(a) after successful completion of a veterans
8 treatment court program created under Chapter 124, Government Code,
9 or former law.

10 SECTION 4. Section 124.001(b), Government Code, is amended
11 to read as follows:

12 (b) If a defendant successfully completes a veterans
13 treatment court program, after notice to the attorney representing
14 the state and a hearing in the veterans treatment court at which
15 that court determines that a dismissal is in the best interest of
16 justice, the veterans treatment court shall provide to the court in
17 which the criminal case is pending information about the dismissal
18 and shall include all of the information required about the
19 defendant for a petition for expunction under Section 2(b), Article
20 55.02, Code of Criminal Procedure. The court in which the criminal
21 case is pending shall dismiss the case against the defendant and:

22 (1) if that trial court is a district court, the court
23 may, with the consent of the attorney representing the state, enter
24 an order of expunction on behalf of the defendant under Section
25 1a(a-1), Article 55.02, Code of Criminal Procedure; or

26 (2) if that trial court is not a district court, the
27 court may, with the consent of the attorney representing the state,

1 forward the appropriate dismissal and expunction information to
2 enable a district court with jurisdiction to enter an order of
3 expunction on behalf of the defendant under Section 1a(a-1),
4 Article 55.02, Code of Criminal Procedure.

5 SECTION 5. Section 411.0728, Government Code, is amended by
6 amending Subsections (a), (c), and (d) and adding Subsection (b-1)
7 to read as follows:

8 (a) This section applies only to a person:

9 (1) who ~~[on conviction for an offense under Section~~
10 ~~43.02, Penal Code,]~~ is placed on community supervision under
11 Chapter 42A [Article 42.12], Code of Criminal Procedure, after
12 conviction for an offense under:

13 (A) Section 481.120, Health and Safety Code, if
14 the offense is punishable under Subsection (b)(1);

15 (B) Section 481.121, Health and Safety Code, if
16 the offense is punishable under Subsection (b)(1);

17 (C) Section 31.03, Penal Code, if the offense is
18 punishable under Subsection (e)(1) or (2);

19 (D) Section 43.02, Penal Code; or

20 (E) Section 43.03(a)(2), Penal Code, if the
21 offense is punishable as a Class A misdemeanor; [7] and

22 (2) with respect to whom the conviction is
23 subsequently set aside by the court under Article 42A.701, Code of
24 Criminal Procedure [Section 20(a) of that article].

25 (b-1) A petition under Subsection (b) must assert that the
26 person seeking an order of nondisclosure under this section has not
27 previously received an order of nondisclosure under this section.

1 (c) After notice to the state, an opportunity for a hearing,
2 a determination by the court that the person has not previously
3 received an order of nondisclosure under this section, and a
4 determination by the court that the person committed the offense
5 solely as a victim of trafficking of persons and that issuance of
6 the order is in the best interest of justice, the court shall issue
7 an order prohibiting criminal justice agencies from disclosing to
8 the public criminal history record information related to the
9 offense for which the defendant was placed on community supervision
10 as described by Subsection (a) [~~under Section 43.02, Penal Code,~~
11 ~~giving rise to the community supervision].~~

12 (d) A person may petition the court that placed the person
13 on community supervision for an order of nondisclosure of criminal
14 history record information under this section only after the
15 person's conviction [~~under Section 43.02, Penal Code,~~7] is set aside
16 as described by Subsection (a).

17 SECTION 6. (a) Except as provided by Subsection (b) of
18 this section, this Act applies to the expunction of arrest records
19 and files for a person who successfully completes a veterans
20 treatment court program under Chapter 124, Government Code, or
21 former law before, on, or after the effective date of this Act,
22 regardless of when the underlying arrest occurred.

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

1 (c) For a person who is entitled to expunction under Article
2 55.01(a)(2)(A)(ii)(a), Code of Criminal Procedure, as amended by
3 this Act, based on a successful completion of a veterans treatment
4 court program under Chapter 124, Government Code, or former law
5 before the effective date of this Act, notwithstanding the 30-day
6 time limit provided for the court to enter an automatic order of
7 expunction under Section 1a(a-1), Article 55.02, Code of Criminal
8 Procedure, as added by this Act, the court may, with the consent of
9 the attorney representing the state, enter an order of expunction
10 for the person as soon as practicable after the court receives
11 written notice from any party to the case about the person's
12 entitlement to the expunction.

13 SECTION 7. The change in law made by this Act applies to a
14 person whose conviction for an offense is set aside under Article
15 42A.701, Code of Criminal Procedure, on or after the effective date
16 of this Act, regardless of when the person committed the offense for
17 which the person was convicted.

18 SECTION 8. This Act takes effect September 1, 2017.

President of the Senate

Speaker of the House

I certify that H.B. No. 322 was passed by the House on April 12, 2017, by the following vote: Yeas 146, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 322 on May 27, 2017, by the following vote: Yeas 145, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 322 was passed by the Senate, with amendments, on May 24, 2017, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

APPROVED: _____

Date

Governor