

1 AN ACT

2 relating to petitions and procedures for the expunction or
3 nondisclosure of criminal records and files and to the consequences
4 of orders of nondisclosure.

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

6 SECTION 1. Article 55.01, Code of Criminal Procedure, is
7 amended by adding Subsection (a-1) to read as follows:

8 (a-1) Notwithstanding Subsection (a)(2)(C), a person's
9 conviction of a felony in the five years preceding the date of the
10 arrest does not affect the person's entitlement to expunction for
11 purposes of an ex parte petition filed on behalf of the person by
12 the director of the Department of Public Safety under Section 2(e),
13 Article 55.02.

14 SECTION 2. Section 2, Article 55.02, Code of Criminal
15 Procedure, is amended by amending Subsection (d) and adding
16 Subsections (e) and (f) to read as follows:

17 (d) If the court finds that the petitioner, or a person for
18 whom an ex parte petition is filed under Subsection (e), is entitled
19 to expunction of any records and files that are the subject of the
20 petition, it shall enter an order directing expunction.

21 (e) The director of the Department of Public Safety or the
22 director's authorized representative may file on behalf of a person
23 described by Subsection (a) of this section or by Section 2a an ex
24 parte petition for expunction in a district court for the county in

1 which:

2 (1) the person was arrested; or

3 (2) the offense was alleged to have occurred.

4 (f) An ex parte petition filed under Subsection (e) must be
5 verified and must include the following or an explanation for why
6 one or more of the following is not included:

7 (1) the person's:

8 (A) full name;

9 (B) sex;

10 (C) race;

11 (D) date of birth;

12 (E) driver's license number;

13 (F) social security number; and

14 (G) address at the time of the arrest;

15 (2) the offense charged against the person;

16 (3) the date the offense charged against the person
17 was alleged to have been committed;

18 (4) the date the person was arrested;

19 (5) the name of the county where the person was
20 arrested and if the arrest occurred in a municipality, the name of
21 the municipality;

22 (6) the name of the agency that arrested the person;

23 (7) the case number and court of offense; and

24 (8) a list of all law enforcement agencies, jails or
25 other detention facilities, magistrates, courts, prosecuting
26 attorneys, correctional facilities, central state depositories of
27 criminal records, and other officials or agencies or other entities

1 of this state or of any political subdivision of this state and of
2 all central federal depositories of criminal records that the
3 person has reason to believe have records or files that are subject
4 to expunction.

5 SECTION 3. Section 411.081, Government Code, is amended by
6 amending Subsections (d), (g), and (h) and by adding Subsections
7 (g-1), (g-2), (i), and (j) to read as follows:

8 (d) Notwithstanding any other provision of this subchapter,
9 if a person is placed on deferred adjudication community
10 supervision under Section 5, Article 42.12, Code of Criminal
11 Procedure, subsequently receives a discharge and dismissal under
12 Section 5(c), Article 42.12, and satisfies the requirements of
13 Subsection (e), the person may petition the court that placed the
14 defendant on deferred adjudication for an order of nondisclosure
15 under this subsection. Except as provided by Subsection (e), a
16 person may petition the court under this subsection regardless of
17 whether the person has been previously placed on deferred
18 adjudication community supervision for another offense. After
19 notice to the state and a hearing on whether the person is entitled
20 to file the petition and issuance of the order is in the best
21 interest of justice, the court shall issue an order prohibiting
22 criminal justice agencies from disclosing to the public criminal
23 history record information related to the offense giving rise to
24 the deferred adjudication. A criminal justice agency may disclose
25 criminal history record information that is the subject of the
26 order only to other criminal justice agencies, for criminal justice
27 or regulatory licensing purposes, an agency or entity listed in

1 Subsection (i), or the person who is the subject of the order [~~an~~
2 ~~individual or agency described by Section 411.083(b)(1), (2), or~~
3 ~~(3)~~]. A person may petition the court that placed the person on
4 deferred adjudication for an order of nondisclosure on payment of a
5 \$28 fee to the clerk of the court in addition to any other fee that
6 generally applies to the filing of a civil petition. The payment
7 may be made only on or after:

8 (1) the discharge and dismissal, if the offense for
9 which the person was placed on deferred adjudication was a
10 misdemeanor other than a misdemeanor described by Subdivision (2);

11 (2) the second [~~fifth~~] anniversary of the discharge
12 and dismissal, if the offense for which the person was placed on
13 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,
14 25, 42, or 46, Penal Code; or

15 (3) the fifth [~~10th~~] anniversary of the discharge and
16 dismissal, if the offense for which the person was placed on
17 deferred adjudication was a felony.

18 (g) When an order of nondisclosure is issued under this
19 section [~~subsection~~], the clerk of the court shall send a copy of
20 the order by certified mail, return receipt requested, to the Crime
21 Records Service of the Department of Public Safety. Not later than
22 10 business days after receipt of the order, the [~~The~~] Department of
23 Public Safety shall seal any criminal history record information
24 maintained by the department that is the subject of the order. The
25 department shall also send a copy of the order by mail or electronic
26 means to all:

27 (1) law enforcement agencies, jails or other detention

1 facilities, magistrates, courts, prosecuting attorneys,
2 correctional facilities, central state depositories of criminal
3 records, and other officials or agencies or other entities of this
4 state or of any political subdivision of this state;

5 (2) [~~and to all~~] central federal depositories of
6 criminal records that there is reason to believe have criminal
7 history record information that is the subject of the order; and

8 (3) private entities that purchase criminal history
9 record information from the department.

10 (g-1) Not later than 30 business days after receipt of an
11 order from the Department of Public Safety under Subsection (g), an
12 individual or entity described by Subsection (g)(1) shall seal any
13 criminal history record information maintained by the individual or
14 entity that is the subject of the order.

15 (g-2) A person whose criminal history record information
16 has been sealed under this section is not required in any
17 application for employment, information, or licensing to state that
18 the person has been the subject of any criminal proceeding related
19 to the information that is the subject of an order issued under this
20 section.

21 (h) The clerk of a court that collects a fee under
22 Subsection (d) shall remit the fee to the comptroller not later than
23 the last day of the month following the end of the calendar quarter
24 in which the fee is collected, and the comptroller shall deposit the
25 fee in the general revenue fund. The Department of Public Safety
26 shall submit a report to the legislature not later than December 1
27 of each even-numbered year that includes information on:

1 (1) the number of petitions for nondisclosure and
2 orders of nondisclosure received by the department in each of the
3 previous two years;

4 (2) the actions taken by the department with respect
5 to the petitions and orders received; ~~and~~

6 (3) the costs incurred by the department in taking
7 those actions; and

8 (4) the number of persons who are the subject of an
9 order of nondisclosure and who became the subject of criminal
10 charges for an offense committed after the order was issued.

11 (i) A criminal justice agency may disclose criminal history
12 record information that is the subject of an order of nondisclosure
13 to the following noncriminal justice agencies or entities only:

14 (1) the State Board for Educator Certification;

15 (2) a school district, charter school, private school,
16 regional education service center, commercial transportation
17 company, or education shared service arrangement;

18 (3) the Texas State Board of Medical Examiners;

19 (4) the Texas School for the Blind and Visually
20 Impaired;

21 (5) the Board of Law Examiners;

22 (6) the State Bar of Texas;

23 (7) a district court regarding a petition for name
24 change under Subchapter B, Chapter 45, Family Code;

25 (8) the Texas School for the Deaf;

26 (9) the Department of Family and Protective Services;

27 (10) the Texas Youth Commission;

1 (11) the Department of Assistive and Rehabilitative
2 Services;

3 (12) the Department of State Health Services, a local
4 mental health service, a local mental retardation authority, or a
5 community center providing services to persons with mental illness
6 or retardation;

7 (13) the Texas Private Security Board;

8 (14) a municipal or volunteer fire department;

9 (15) the Board of Nurse Examiners;

10 (16) a safe house providing shelter to children in
11 harmful situations;

12 (17) a public or nonprofit hospital or hospital
13 district;

14 (18) the Texas Juvenile Probation Commission;

15 (19) the securities commissioner, the banking
16 commissioner, the savings and loan commissioner, or the credit
17 union commissioner;

18 (20) the Texas State Board of Public Accountancy;

19 (21) the Texas Department of Licensing and Regulation;

20 (22) the Health and Human Services Commission; and

21 (23) the Department of Aging and Disability Services.

22 (j) If the Department of Public Safety receives information
23 indicating that a private entity that purchases criminal history
24 record information from the department has been found by a court to
25 have committed five or more violations of Section 552.1425 by
26 compiling or disseminating information with respect to which an
27 order of nondisclosure has been issued, the department may not

1 release any criminal history record information to that entity
2 until the first anniversary of the date of the most recent
3 violation.

4 SECTION 4. Article 35.12, Code of Criminal Procedure, is
5 amended to read as follows:

6 Art. 35.12. MODE OF TESTING. (a) In testing the
7 qualification of a prospective juror after the juror [~~he~~] has been
8 sworn, the juror [~~he~~] shall be asked by the court, or under its
9 direction:

10 1. Except for failure to register, are you a qualified
11 voter in this county and state under the Constitution and laws of
12 this state?

13 2. Have you ever been convicted of theft or any felony?

14 3. Are you under indictment or legal accusation for
15 theft or any felony?

16 (b) In testing the qualifications of a prospective juror,
17 with respect to whether the juror has been the subject of an order
18 of nondisclosure or has a criminal history that includes
19 information subject to that order, the juror may state only that the
20 matter in question has been sealed.

21 SECTION 5. The changes in law made by this Act relating to a
22 person's eligibility for an order of nondisclosure apply to
23 criminal history record information related to a deferred
24 adjudication or similar procedure described by Subsection (f),
25 Section 411.081, Government Code, regardless of whether the
26 deferred adjudication or procedure is entered before, on, or after
27 the effective date of this Act.

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SECTION 6. This Act takes effect September 1, 2005.

David Suukunt

President of the Senate

Jim Caldwell

Speaker of the House

I certify that H.B. No. 3093 was passed by the House on May 10, 2005, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 3093 on May 27, 2005, by a non-record vote.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 3093 was passed by the Senate, with amendments, on May 24, 2005, by the following vote: Yeas 31, Nays 0.

Letsy Spaw

Secretary of the Senate

APPROVED: 18 JUNE 05

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
10:20 AM

JUN 18 2005

Roger Williams
Secretary of State