

BILL ANALYSIS

Senate Research Center

H.B. 322
By: Canales et al. (Hinojosa)
Criminal Justice
7/27/2017
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 81st Texas Legislature passed S.B. 1940, which authorized the creation of veterans courts. These courts hold former military members who are charged with crimes accountable through a stricter schedule of court appearances and treatment appointments. Currently, once a person completes a veterans court pretrial diversion program, in some cases they may be eligible for an expunction. However, this requires the person to file a petition for expunction of criminal records to get their records expunged, a process which often involves hiring a lawyer and paying a fee.

H.B. 322 requires that once a person has successfully completed a veterans court program that the veterans court judge shall automatically order an expunction of the crime without a charge or fee for the expunctions. (Original Author's / Sponsor's Statement of Intent)

H.B. 322 amends current law 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.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 55.01, Code of Criminal Procedure, by amending Subsection (a) and adding Subsection (a-3), as follows:

(a) Provides that certain persons are entitled to have all records and files relating to a certain arrest expunged if:

(1) makes no changes to this subdivision;

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

(A) regardless of certain circumstances, an indictment or information charging the person with the commission of a misdemeanor offense based on the person's arrest or charging the person with the commission of any felony offense arising out of the same transaction for which the person was arrested:

(i) makes no changes to this subparagraph; or

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

(a) the person completed a veterans treatment court program (VTCP) created under Chapter 124 (Veterans Treatment Court Program), Government Code, or former law, subject to Subsection (a-3);

(b) the person completed a certain pretrial intervention program other than a VTCP;

(c) and (d) makes nonsubstantive changes.

(a-3) Provides that a person is eligible under Subsection (a)(2)(A)(ii)(a) for an expunction of arrest records and files only if the person has not previously received an expunction of arrest records and files under that sub-subparagraph and the person submits to the court an affidavit attesting to that fact.

SECTION 2. Amends Section 1a, Article 55.02, Code of Criminal Procedure, by adding Subsection (a-1), as follows:

(a-1) Authorizes a trial court dismissing a case following a person's successful completion of a VTCP, if the trial court is a district court, or a district court in the county in which the trial court is located, to enter an order of expunction for certain persons, with the consent of the attorney representing the state, not later than a certain date. Prohibits a court that enters an order for expunction, notwithstanding any other law, from charging any fee or assessing any cost for the expunction.

SECTION 3. Amends Article 102.006(b), Code of Criminal Procedure, as follows:

(b) Requires that the fees under Subsection (a) (relating to requiring a petitioner seeking expunction of a criminal record to pay certain fees in addition to certain other fees) be waived if the petitioner is entitled to a certain expunction after successful completion of a VTCP. Makes nonsubstantive changes.

SECTION 4. Amends Section 124.001(b), Government Code, as follows:

(b) Requires the veterans treatment court, if a defendant successfully completes a VTCP and under certain circumstances, to provide to the court in which the criminal case is pending information about the dismissal and to include all of the information required about the defendant for a certain petition for expunction. Requires the court in which the criminal case is pending to dismiss the case against the defendant and:

(1) authorizes the trial court, if that court is a district court, to enter a certain order of expunction, with the consent of the attorney representing the state, on behalf of the defendant; or

(2) authorizes the trial court, if that court is not a district court, to forward the appropriate dismissal and expunction information, with the consent of the attorney representing the state, to enable a district court with jurisdiction to enter a certain order of expunction on behalf of the defendant.

SECTION 5. Amends Section 411.0728, Government Code, by amending Subsections (a), (c), and (d) and adding Subsection (b-1), as follows:

(a) Provides that this section (Procedure for Certain Victims of Trafficking of Persons) applies only to a person who is placed on community supervision under Chapter 42A, Code of Criminal Procedure, rather than who on conviction for an offense under Section 43.02 (Prostitution), Penal Code, is placed on community supervision under Article 42.12, Code of Criminal Procedure, after conviction for an offense under certain sections. Deletes existing text referencing Section 20(a) of Article 42.12, Code of Criminal Procedure.

(b-1) Requires that a petition under Subsection (b) (relating to authorizing a person who is convicted of an offense and placed on community supervision to petition the court) assert that the person seeking an order of nondisclosure under this section has not previously received an order of nondisclosure under this section.

(c) Requires the court, after notice to the state, an opportunity for a hearing, a determination by the court that the person has not previously received an order of nondisclosure under this section, and a determination by the court that the person committed the offense solely as a victim of trafficking of persons and that issuance of the order is in the best interest of justice, to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense for which the defendant was placed on community supervision as described by Subsection (a), rather than under Section 43.02, Penal Code, giving rise to the community supervision.

(d) Authorizes a person to petition the court that placed the person on community supervision for an order of nondisclosure of criminal history record information under this section only after the person's conviction is set aside as described by Subsection (a), rather than under Section 43.02, Penal Code.

SECTION 6. (a) Provides that, except as provided by Subsection (b), this Act applies to the expunction of arrest records and files for a person who successfully completes a VTCP under Chapter 124, Government Code, or former law before, on, or after the effective date of this Act, regardless of when the underlying arrest occurred.

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

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

SECTION 7. Provides that the change in law made by this Act applies to a person whose conviction for an offense is set aside under 42A.701 (Reduction or Termination of Community Supervision Period), Criminal Procedure, on or after the effective date of this Act, regardless of when the person committed the offense for which the person was convicted.

SECTION 8. Effective date: September 1, 2017.