

PRELIMINARY DRAFT

TEXAS LEGISLATIVE COUNCIL  
Code of Criminal Procedure  
Chapter 55A  
10/10/22

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20		applies to a person who has been placed under a custodial or	
21		noncustodial arrest for commission of a felony or misdemeanor.	
22		(Code Crim. Proc., Art. 55.01(a) (part).)	
23		<u>Source Law</u>	
24	Art. 55.01.	RIGHT TO EXPUNCTION. (a) A person	
25		who has been placed under a custodial or noncustodial	
26		arrest for commission of either a felony or	
27		misdemeanor [is entitled] . . . .	
28		<u>Revised Law</u>	
29	Art. 55A.002.	FOLLOWING TRIAL COURT ACQUITTAL. A person to	
30		whom this subchapter applies is entitled to have all records and	
31		files relating to the arrest expunged if the person is:	
32		(1) tried for the offense for which the person was	
33		arrested; and	
34		(2) acquitted by the trial court, except as provided	
35		by Article 55A.151. (Code Crim. Proc., Art. 55.01(a) (part).)	

1 Source Law

2 Art. 55.01. RIGHT TO EXPUNCTION. (a) A person  
3 [who has been placed under a custodial or noncustodial  
4 arrest for commission of either a felony or  
5 misdemeanor] is entitled to have all records and files  
6 relating to the arrest expunged if:

7 (1) the person is tried for the offense for  
8 which the person was arrested and is:

9 (A) acquitted by the trial court,  
10 except as provided by Subsection (c);

11 . . .

12 Revised Law

13 Art. 55A.003. PARDON FOR ACTUAL INNOCENCE. A person to whom  
14 this subchapter applies is entitled to have all records and files  
15 relating to the arrest expunged if:

16 (1) the person is:

17 (A) tried for and convicted of the offense for  
18 which the person was arrested; and

19 (B) subsequently pardoned or otherwise granted  
20 relief on the basis of actual innocence with respect to that  
21 offense; and

22 (2) the applicable pardon or court order clearly  
23 indicates on its face that the pardon or order was granted or issued  
24 on the basis of the person's actual innocence. (Code Crim. Proc.,  
25 Art. 55.01(a) (part).)

26 Source Law

27 Art. 55.01. RIGHT TO EXPUNCTION. (a) A person  
28 [who has been placed under a custodial or noncustodial  
29 arrest for commission of either a felony or  
30 misdemeanor] is entitled to have all records and files  
31 relating to the arrest expunged if:

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

34 . . .

35 (B) convicted and subsequently:

36 . . .  
37 (ii) pardoned or otherwise  
38 granted relief on the basis of actual innocence with  
39 respect to that offense, if the applicable pardon or  
40 court order clearly indicates on its face that the  
41 pardon or order was granted or rendered on the basis of  
42 the person's actual innocence; or

43 . . .

44 Revisor's Note

45 (1) Article 55.01(a)(1)(B)(ii), Code of  
46 Criminal Procedure, provides that an arrested person

1 is entitled to have all records and files relating to  
2 the arrest expunged if the person is tried for the  
3 offense and "convicted and subsequently . . . pardoned  
4 or otherwise granted relief on the basis of actual  
5 innocence with respect to that offense." It is clear  
6 from the context that the offense for which the person  
7 is convicted and subsequently pardoned or granted  
8 relief is the same offense for which the person was  
9 arrested. The revised law is drafted accordingly.

10 (2) Article 55.01(a)(1)(B)(ii), Code of  
11 Criminal Procedure, refers to a pardon or order being  
12 "rendered." The revised law substitutes "issued" for  
13 "rendered" because in this context the terms are  
14 synonymous and "issued" is the more commonly used  
15 term.

16 Revised Law

17 Art. 55A.004. PARDON FOR REASON OTHER THAN ACTUAL  
18 INNOCENCE. A person to whom this subchapter applies is entitled to  
19 have all records and files relating to the arrest expunged if the  
20 person is:

21 (1) tried for and convicted of the offense for which  
22 the person was arrested; and

23 (2) subsequently pardoned for that offense for a  
24 reason other than that described by Article 55A.003. (Code Crim.  
25 Proc., Art. 55.01(a) (part).)

26 Source Law

27 Art. 55.01. RIGHT TO EXPUNCTION. (a) A person  
28 [who has been placed under a custodial or noncustodial  
29 arrest for commission of either a felony or  
30 misdemeanor] is entitled to have all records and files  
31 relating to the arrest expunged if:

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

34 . . .  
35 (B) convicted and subsequently:  
36 (i) pardoned for a reason other  
37 than that described by Subparagraph (ii); or  
38 . . .

1 Revisor's Note

2 Article 55.01(a)(1)(B)(i), Code of Criminal  
3 Procedure, provides that an arrested person is  
4 entitled to have all records and files relating to the  
5 arrest expunged if the person is tried for the offense  
6 and "convicted and subsequently . . . pardoned" for a  
7 reason other than actual innocence. For the reason  
8 stated in Revisor's Note (1) to Article 55A.003, the  
9 revised law clarifies that the offense for which the  
10 person is convicted and subsequently pardoned is the  
11 same offense for which the person was arrested.

12 Revised Law

13 Art. 55A.005. UNLAWFUL CARRYING OF HANDGUN. A person to  
14 whom this subchapter applies is entitled to have all records and  
15 files relating to the arrest expunged if:

16 (1) the person was tried for and convicted of the  
17 offense for which the person was arrested; and

18 (2) the offense was committed before September 1,  
19 2021, under Section 46.02(a), Penal Code, as that section existed  
20 before that date. (Code Crim. Proc., Art. 55.01(a) (part).)

21 Source Law

22 Art. 55.01. RIGHT TO EXPUNCTION. (a) A person  
23 [who has been placed under a custodial or noncustodial  
24 arrest for commission of either a felony or  
25 misdemeanor] is entitled to have all records and files  
26 relating to the arrest expunged if:

27 (1) the person is tried for the offense for  
28 which the person was arrested and is:

29 . . .  
30 (C) convicted of an offense committed  
31 before September 1, 2021, under Section 46.02(a),  
32 Penal Code, as that section existed before that date;  
33 or

34 . . .

35 Revisor's Note

36 Article 55.01(a)(1)(C), Code of Criminal  
37 Procedure, provides that a person is entitled to have  
38 all records and files relating to an arrest expunged if  
39 "the person is tried for the offense for which the  
40 person was arrested and is . . . convicted of an

1 offense committed before September 1, 2021, under  
2 Section 46.02(a), Penal Code, as that section existed  
3 before that date." It is clear from the context that  
4 for a person to be entitled to an expunction under this  
5 provision, the person must have been arrested for and  
6 convicted of an offense committed before September 1,  
7 2021, under Section 46.02(a), Penal Code, and the  
8 revised law is drafted accordingly.

9 Revised Law

10 Art. 55A.006. MISTAKEN IDENTITY. Notwithstanding the  
11 limitation provided by Article 55A.001, a person is entitled to  
12 obtain the expunction of any information that identifies the  
13 person, including the person's name, address, date of birth,  
14 driver's license number, and social security number, contained in  
15 records and files relating to the person's arrest or the arrest of  
16 another person if:

17 (1) the expunction of identifying information is  
18 sought with respect to the arrest of the person asserting the  
19 entitlement and the person was arrested solely as a result of  
20 identifying information that was inaccurate due to a clerical  
21 error; or

22 (2) the expunction of identifying information is  
23 sought with respect to the arrest of a person other than the person  
24 asserting the entitlement and:

25 (A) the information identifying the person  
26 asserting the entitlement was falsely given by the arrested person  
27 as the arrested person's identifying information without the  
28 consent of the person asserting the entitlement; and

29 (B) the only reason why the identifying  
30 information of the person asserting the entitlement is contained in  
31 the applicable arrest records and files is the deception of the  
32 arrested person. (Code Crim. Proc., Art. 55.01(d); New.)

33 Source Law

34 (d) A person is entitled to obtain the

1 expunction of any information that identifies the  
2 person, including the person's name, address, date of  
3 birth, driver's license number, and social security  
4 number, contained in records and files relating to the  
5 person's arrest or the arrest of another person if:

6 (1) the expunction of identifying  
7 information is sought with respect to the arrest of the  
8 person asserting the entitlement and the person was  
9 arrested solely as a result of identifying information  
10 that was inaccurate due to a clerical error; or

11 (2) the expunction of identifying  
12 information is sought with respect to the arrest of a  
13 person other than the person asserting the entitlement  
14 and:

15 (A) the information identifying the  
16 person asserting the entitlement was falsely given by  
17 the arrested person as the arrested person's  
18 identifying information without the consent of the  
19 person asserting the entitlement; and

20 (B) the only reason why the  
21 identifying information of the person asserting the  
22 entitlement is contained in the applicable arrest  
23 records and files is because of the deception of the  
24 arrested person.

25 Revisor's Note

26 Article 55.01(a), Code of Criminal Procedure,  
27 contains a limitation regarding a person's entitlement  
28 to an expunction. The limitation is revised in this  
29 subchapter as Article 55A.001 and applies to the  
30 remaining portion of Article 55.01(a) that is revised  
31 in this subchapter (see Articles 55A.002 through  
32 55A.005). Article 55.01(d), Code of Criminal  
33 Procedure, does not contain the limiting language  
34 found in Article 55.01(a), and the revised law adds  
35 "[n]otwithstanding the limitation provided by Article  
36 55A.001" to clarify that the limitation does not apply  
37 to the revision of Article 55.01(d).

38 SUBCHAPTER B. SPECIAL CIRCUMSTANCES REQUIRING MANDATORY  
39 EXPUNCTION

40 Revised Law

41 Art. 55A.051. APPLICABILITY OF SUBCHAPTER. This subchapter  
42 applies to a person who has been placed under a custodial or  
43 noncustodial arrest for commission of a felony or misdemeanor if:

44 (1) the person has been released;

45 (2) the charge, if any, has not resulted in a final  
46 conviction and is no longer pending; and



1 (3) there was no court-ordered community supervision  
2 under Chapter 42A for the offense, other than for a Class C  
3 misdemeanor. (Code Crim. Proc., Art. 55.01(a) (part).)

4 Source Law

5 Art. 55.01. RIGHT TO EXPUNCTION. (a) A person  
6 who has been placed under a custodial or noncustodial  
7 arrest for commission of either a felony or  
8 misdemeanor [is entitled to have all records and files  
9 relating to the arrest expunged] if:

10 . . . .  
11 (2) the person has been released and the  
12 charge, if any, has not resulted in a final conviction  
13 and is no longer pending and there was no court-ordered  
14 community supervision under Chapter 42A for the  
15 offense, unless the offense is a Class C misdemeanor,  
16 . . . .

17 Revised Law

18 Art. 55A.052. INDICTMENT OR INFORMATION NOT PRESENTED. (a)  
19 A person to whom this subchapter applies is entitled to have all  
20 records and files relating to the arrest expunged if an indictment  
21 or information charging the person with the commission of a  
22 misdemeanor offense based on the person's arrest or charging the  
23 person with the commission of any felony offense arising out of the  
24 same transaction for which the person was arrested has not been  
25 presented against the person at any time following the arrest and  
26 if:

27 (1) at least 180 days have elapsed from the date of  
28 arrest if the arrest for which the expunction was sought was for an  
29 offense punishable as a Class C misdemeanor and there was no felony  
30 charge arising out of the same transaction for which the person was  
31 arrested;

32 (2) at least one year has elapsed from the date of  
33 arrest if the arrest for which the expunction was sought was for an  
34 offense punishable as a Class B or A misdemeanor and there was no  
35 felony charge arising out of the same transaction for which the  
36 person was arrested;

37 (3) at least three years have elapsed from the date of  
38 arrest if the arrest for which the expunction was sought was for an  
39 offense punishable as a felony or there was a felony charge arising

1 out of the same transaction for which the person was arrested; or

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

6 (b) A person is entitled to an expunction under this article  
7 regardless of whether any statute of limitations exists for the  
8 offense and whether any limitations period for the offense has  
9 expired. (Code Crim. Proc., Art. 55.01(a) (part).)

10 Source Law

11 Art. 55.01. RIGHT TO EXPUNCTION. (a) A person  
12 [who has been placed under a custodial or noncustodial  
13 arrest for commission of either a felony or  
14 misdemeanor] is entitled to have all records and files  
15 relating to the arrest expunged if:

16  
17 [(2) the person has been released and the  
18 charge, if any, has not resulted in a final conviction  
19 and is no longer pending and there was no court-ordered  
20 community supervision under Chapter 42A for the  
21 offense, unless the offense is a Class C misdemeanor,]  
22 provided that:

23 (A) regardless of whether any statute  
24 of limitations exists for the offense and whether any  
25 limitations period for the offense has expired, an  
26 indictment or information charging the person with the  
27 commission of a misdemeanor offense based on the  
28 person's arrest or charging the person with the  
29 commission of any felony offense arising out of the  
30 same transaction for which the person was arrested:

31 (i) has not been presented  
32 against the person at any time following the arrest,  
33 and:

34 (a) at least 180 days have  
35 elapsed from the date of arrest if the arrest for which  
36 the expunction was sought was for an offense  
37 punishable as a Class C misdemeanor and if there was no  
38 felony charge arising out of the same transaction for  
39 which the person was arrested;

40 (b) at least one year has  
41 elapsed from the date of arrest if the arrest for which  
42 the expunction was sought was for an offense  
43 punishable as a Class B or A misdemeanor and if there  
44 was no felony charge arising out of the same  
45 transaction for which the person was arrested;

46 (c) at least three years  
47 have elapsed from the date of arrest if the arrest for  
48 which the expunction was sought was for an offense  
49 punishable as a felony or if there was a felony charge  
50 arising out of the same transaction for which the  
51 person was arrested; or

52 (d) the attorney  
53 representing the state certifies that the applicable  
54 arrest records and files are not needed for use in any  
55 criminal investigation or prosecution, including an  
56 investigation or prosecution of another person; or

57 . . .

1 Revised Law

2 Art. 55A.053. INDICTMENT OR INFORMATION DISMISSED OR  
3 QUASHED. (a) A person to whom this subchapter applies is entitled  
4 to have all records and files relating to the arrest expunged if:

5 (1) an indictment or information charging the person  
6 with the commission of a misdemeanor offense based on the person's  
7 arrest or charging the person with the commission of any felony  
8 offense arising out of the same transaction for which the person was  
9 arrested, when presented at any time following the arrest, was  
10 dismissed or quashed; and

11 (2) the court finds that the indictment or information  
12 was dismissed or quashed because:

13 (A) the person completed a veterans treatment  
14 court program created under Chapter 124, Government Code, or former  
15 law, subject to Subsection (b);

16 (B) the person completed a mental health court  
17 program created under Chapter 125, Government Code, or former law,  
18 subject to Subsection (c);

19 (C) the person completed a pretrial intervention  
20 program authorized under Section 76.011, Government Code, other  
21 than a program described by Paragraph (A) or (B);

22 (D) the presentment of the indictment or  
23 information was made because of mistake, false information, or  
24 other similar reason indicating absence of probable cause at the  
25 time of the dismissal to believe the person committed the offense;  
26 or

27 (E) the indictment or information was void.

28 (b) A person is eligible under Subsection (a)(2)(A) for an  
29 expunction of arrest records and files only if the person:

30 (1) has not previously received an expunction under  
31 that paragraph; and

32 (2) submits to the court an affidavit attesting to  
33 that fact.

34 (c) A person is eligible under Subsection (a)(2)(B) for an

1 expunction of arrest records and files only if the person:

2 (1) has not previously received an expunction under  
3 that paragraph; and

4 (2) submits to the court an affidavit attesting to  
5 that fact.

6 (d) A person is entitled to an expunction under this article  
7 regardless of whether any statute of limitations exists for the  
8 offense and whether any limitations period for the offense has  
9 expired. (Code Crim. Proc., Arts. 55.01(a) (part), (a-3), (a-4).)

10 Source Law

11 Art. 55.01. RIGHT TO EXPUNCTION. (a) A person  
12 [who has been placed under a custodial or noncustodial  
13 arrest for commission of either a felony or  
14 misdemeanor] is entitled to have all records and files  
15 relating to the arrest expunged if:

16  
17 [(2) the person has been released and the  
18 charge, if any, has not resulted in a final conviction  
19 and is no longer pending and there was no court-ordered  
20 community supervision under Chapter 42A for the  
21 offense, unless the offense is a Class C misdemeanor,]  
22 provided that:

23 (A) regardless of whether any statute  
24 of limitations exists for the offense and whether any  
25 limitations period for the offense has expired, an  
26 indictment or information charging the person with the  
27 commission of a misdemeanor offense based on the  
28 person's arrest or charging the person with the  
29 commission of any felony offense arising out of the  
30 same transaction for which the person was arrested:

31  
32 (ii) if presented at any time  
33 following the arrest, was dismissed or quashed, and  
34 the court finds that the indictment or information was  
35 dismissed or quashed because:

36 (a) the person completed a  
37 veterans treatment court program created under Chapter  
38 124, Government Code, or former law, subject to  
39 Subsection (a-3);

40 (b) the person completed a  
41 mental health court program created under Chapter 125,  
42 Government Code, or former law, subject to Subsection  
43 (a-4);

44 (c) the person completed a  
45 pretrial intervention program authorized under  
46 Section 76.011, Government Code, other than a veterans  
47 treatment court program created under Chapter 124,  
48 Government Code, or former law, or a mental health  
49 court program created under Chapter 125, Government  
50 Code, or former law;

51 (d) the presentment had  
52 been made because of mistake, false information, or  
53 other similar reason indicating absence of probable  
54 cause at the time of the dismissal to believe the  
55 person committed the offense; or

56 (e) the indictment or  
57 information was void; or

1 . . .

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

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

8 (2) the person submits to the court an  
9 affidavit attesting to that fact.

10 (a-4) A person is eligible under Subsection  
11 (a)(2)(A)(ii)(b) for an expunction of arrest records  
12 and files only if:

13 (1) the person has not previously received  
14 an expunction of arrest records and files under that  
15 sub-subparagraph; and

16 (2) the person submits to the court an  
17 affidavit attesting to that fact.

18 Revised Law

19 Art. 55A.054. EXPIRATION OF LIMITATIONS PERIOD. A person  
20 to whom this subchapter applies is entitled to have all records and  
21 files relating to the arrest expunged if prosecution of the person  
22 for the offense for which the person was arrested is no longer  
23 possible because the limitations period has expired. (Code Crim.  
24 Proc., Art. 55.01(a) (part).)

25 Source Law

26 Art. 55.01. RIGHT TO EXPUNCTION. (a) A person  
27 [who has been placed under a custodial or noncustodial  
28 arrest for commission of either a felony or  
29 misdemeanor] is entitled to have all records and files  
30 relating to the arrest expunged if:

31 . . .  
32 [(2) the person has been released and the  
33 charge, if any, has not resulted in a final conviction  
34 and is no longer pending and there was no court-ordered  
35 community supervision under Chapter 42A for the  
36 offense, unless the offense is a Class C misdemeanor,]  
37 provided that:

38 . . .  
39 (B) prosecution of the person for the  
40 offense for which the person was arrested is no longer  
41 possible because the limitations period has expired.

42 SUBCHAPTER C. DISCRETIONARY EXPUNCTION

43 Revised Law

44 Art. 55A.101. APPELLATE COURT ACQUITTAL OR RECOMMENDATION  
45 OF ATTORNEY REPRESENTING STATE. (a) Except as provided by Article  
46 55A.151 and subject to Subsection (b), a district court, a justice  
47 court, or a municipal court of record may expunge all records and  
48 files relating to the arrest of a person if:

49 (1) the person is:

1 (A) tried for the offense for which the person  
2 was arrested;

3 (B) convicted of the offense; and

4 (C) acquitted by the court of criminal appeals  
5 or, if the period for granting a petition for discretionary review  
6 has expired, by a court of appeals; or

7 (2) an office of the attorney representing the state  
8 authorized by law to prosecute the offense for which the person was  
9 arrested recommends the expunction to the court before the person  
10 is tried for the offense, regardless of whether an indictment or  
11 information has been presented against the person with respect to  
12 the offense.

13 (b) A justice court or a municipal court of record may only  
14 expunge records and files under Subsection (a) that relate to the  
15 arrest of a person for an offense punishable by fine only. (Code  
16 Crim. Proc., Arts. 55.01(b), (b-1).)

17 Source Law

18 (b) Except as provided by Subsection (c) and  
19 subject to Subsection (b-1), a district court, a  
20 justice court, or a municipal court of record may  
21 expunge all records and files relating to the arrest of  
22 a person under the procedure established under Article  
23 55.02 if:

24 (1) the person is:

25 (A) tried for the offense for which  
26 the person was arrested;

27 (B) convicted of the offense; and

28 (C) acquitted by the court of  
29 criminal appeals or, if the period for granting a  
30 petition for discretionary review has expired, by a  
31 court of appeals; or

32 (2) an office of the attorney representing  
33 the state authorized by law to prosecute the offense  
34 for which the person was arrested recommends the  
35 expunction to the court before the person is tried for  
36 the offense, regardless of whether an indictment or  
37 information has been presented against the person in  
38 relation to the offense.

39 (b-1) A justice court or a municipal court of  
40 record may only expunge records and files under  
41 Subsection (b) that relate to the arrest of a person  
42 for an offense punishable by fine only.

43 Revisor's Note

44 Article 55.01(b), Code of Criminal Procedure,  
45 provides that a person eligible for expunction under  
46 that subsection may seek an expunction "under the

1 procedure established under Article 55.02." The  
2 revised law omits the quoted language as unnecessary  
3 because the procedures under that article, revised in  
4 Subchapters E and F of this chapter, apply on their own  
5 terms.

6 SUBCHAPTER D. EXPUNCTION PROHIBITED

7 Revised Law

8 Art. 55A.151. CONVICTION OR POTENTIAL PROSECUTION ARISING  
9 FROM SAME CRIMINAL EPISODE. A court may not order the expunction of  
10 records and files relating to an arrest for an offense for which a  
11 person is subsequently acquitted, whether by the trial court, a  
12 court of appeals, or the court of criminal appeals, if the offense  
13 for which the person was acquitted arose out of a criminal episode,  
14 as defined by Section 3.01, Penal Code, and the person was convicted  
15 of or remains subject to prosecution for at least one other offense  
16 occurring during the criminal episode. (Code Crim. Proc., Art.  
17 55.01(c).)

18 Source Law

19 (c) A court may not order the expunction of  
20 records and files relating to an arrest for an offense  
21 for which a person is subsequently acquitted, whether  
22 by the trial court, a court of appeals, or the court of  
23 criminal appeals, if the offense for which the person  
24 was acquitted arose out of a criminal episode, as  
25 defined by Section 3.01, Penal Code, and the person was  
26 convicted of or remains subject to prosecution for at  
27 least one other offense occurring during the criminal  
28 episode.

29 Revised Law

30 Art. 55A.152. DRIVER'S LICENSE SUSPENSION OR REVOCATION.  
31 Records relating to the suspension or revocation of a driver's  
32 license, permit, or privilege to operate a motor vehicle may not be  
33 expunged under this chapter except as provided by Section 524.015  
34 or 724.048, Transportation Code. (Code Crim. Proc., Art. 55.06.)

35 Source Law

36 Art. 55.06. LICENSE SUSPENSIONS AND  
37 REVOCATIONS. Records relating to the suspension or  
38 revocation of a driver's license, permit, or privilege  
39 to operate a motor vehicle may not be expunged under  
40 this chapter except as provided in Section 524.015,  
41 Transportation Code, or Section 724.048 of that code.

1 Revised Law

2 Art. 55A.153. ARREST FOR VIOLATION OF COMMUNITY  
3 SUPERVISION. Notwithstanding any provision of Subchapter A, B, or  
4 C, a person may not expunge records and files relating to an arrest  
5 that occurs pursuant to a warrant issued under Article 42A.751(b).  
6 (Code Crim. Proc., Art. 55.01(a-1).)

7 Source Law

8 (a-1) Notwithstanding any other provision of  
9 this article, a person may not expunge records and  
10 files relating to an arrest that occurs pursuant to a  
11 warrant issued under Article 42A.751(b).

12 Revisor's Note

13 Article 55.01(a-1), Code of Criminal Procedure,  
14 provides that notwithstanding any other provision of  
15 that article, records and files of certain arrests may  
16 not be expunged. The provisions of Article 55.01  
17 specifying when a person is entitled to or eligible for  
18 an expunction are revised as Subchapters A, B, and C of  
19 this chapter, and the revised law is drafted  
20 accordingly.

21 Revised Law

22 Art. 55A.154. CERTAIN PERSONS ABSCONDING AFTER ARREST.  
23 Notwithstanding any provision of Subchapter A, B, or C, a person who  
24 intentionally or knowingly absconds from the jurisdiction after  
25 being released under Chapter 17 following an arrest is not eligible  
26 under Article 55A.052(a)(1), (2), or (3) or 55A.054 for an  
27 expunction of the records and files relating to that arrest. (Code  
28 Crim. Proc., Art. 55.01(a-2).)

29 Source Law

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

37 Revisor's Note

38 Article 55.01(a-2), Code of Criminal Procedure,



1 provides that notwithstanding any other provision of  
2 that article, a person who absconds from the  
3 jurisdiction after being released on bail is not  
4 eligible for an expunction under certain provisions.  
5 The revised law adds a reference to Subchapters A, B,  
6 and C for the reason stated in the revisor's note to  
7 Article 55A.153.

8 SUBCHAPTER E. PROCEDURES FOR AUTOMATIC ENTRY OF EXPUNCTION ORDER

9 Revised Law

10 Art. 55A.201. TRIAL COURT ACQUITTAL. (a) At the request of  
11 the acquitted person and after notice to the state, or at the  
12 request of the attorney representing the state with the consent of  
13 the acquitted person, an expunction order shall be entered, not  
14 later than the 30th day after the date of the acquittal, for a  
15 person entitled to expunction under Article 55A.002 by:

16 (1) the trial court presiding over the case in which  
17 the person was acquitted, if the court is:

18 (A) a district court;

19 (B) a justice court; or

20 (C) a municipal court of record; or

21 (2) a district court in the county in which the trial  
22 court is located.

23 (b) On acquittal, the trial court shall advise the acquitted  
24 person of the right to expunction.

25 (c) The party requesting the expunction order shall provide  
26 to the court all of the information required in a petition for  
27 expunction under Article 55A.253.

28 (d) An expunction order under this article shall be prepared  
29 for the court's signature by:

30 (1) the attorney for the acquitted person in the case  
31 in which the person was acquitted, if the acquitted person was  
32 represented by an attorney; or

33 (2) the attorney representing the state, if the person  
34 was not represented by an attorney or if the attorney representing

1 the state requested the order. (Code Crim. Proc., Art. 55.02, Sec.  
2 1.)

3 Source Law

4 Art. 55.02. PROCEDURE FOR EXPUNCTION.

5 Sec. 1. At the request of the acquitted person  
6 and after notice to the state, or at the request of the  
7 attorney for the state with the consent of the  
8 acquitted person, the trial court presiding over the  
9 case in which the person was acquitted, if the trial  
10 court is a district court, a justice court, or a  
11 municipal court of record, or a district court in the  
12 county in which the trial court is located shall enter  
13 an order of expunction for a person entitled to  
14 expunction under Article 55.01(a)(1)(A) not later than  
15 the 30th day after the date of the acquittal. On  
16 acquittal, the trial court shall advise the acquitted  
17 person of the right to expunction. The party  
18 requesting the order of expunction shall provide to  
19 the court all of the information required in a petition  
20 for expunction under Section 2(b). The attorney for  
21 the acquitted person in the case in which the person  
22 was acquitted, if the person was represented by  
23 counsel, or the attorney for the state, if the person  
24 was not represented by counsel or if the attorney for  
25 the state requested the order of expunction, shall  
26 prepare the order for the court's signature.

27 Revisor's Note

28 Section 1, Article 55.02, Code of Criminal  
29 Procedure, refers to an "attorney for the state."  
30 Throughout this chapter, the revised law substitutes  
31 "attorney representing the state" for "attorney for  
32 the state" and "prosecuting attorney" because the  
33 terms are synonymous and "attorney representing the  
34 state" is more commonly used in the Code of Criminal  
35 Procedure.

36 Revised Law

37 Art. 55A.202. PARDON FOR ACTUAL INNOCENCE. (a) In a case in  
38 which a person is entitled to expunction under Article 55A.003, an  
39 expunction order shall be entered, not later than the 30th day after  
40 the date the court receives notice of the applicable pardon or other  
41 grant of relief, for the person by:

42 (1) the trial court presiding over the case, if the  
43 court is:

44 (A) a district court;

45 (B) a justice court; or

1 (C) a municipal court of record; or  
2 (2) a district court in the county in which the trial  
3 court is located.

4 (b) The person described by Subsection (a) shall provide to  
5 the court all of the information required in a petition for  
6 expunction under Article 55A.253. (Code Crim. Proc., Art. 55.02,  
7 Sec. 1a(a).)

8 Source Law

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

23 Revisor's Note

24 Section 1a(a), Article 55.02, Code of Criminal  
25 Procedure, states that an expunction order shall be  
26 entered when a person is "convicted and subsequently  
27 granted relief or pardoned on the basis of actual  
28 innocence of the offense of which the person was  
29 convicted." The revised law omits the quoted language  
30 as unnecessary because it repeats the substance of the  
31 entitlement under Article 55.01(a)(1)(B)(ii), which  
32 is revised as Article 55A.003 of this chapter. The  
33 omitted law reads:

34 Sec. 1a. (a) [The trial court  
35 presiding over a case in which a person] is  
36 convicted and subsequently granted relief  
37 or pardoned on the basis of actual innocence  
38 of the offense of which the person was  
39 convicted . . . .

40 Revised Law

41 Art. 55A.203. CERTAIN SPECIALTY COURT PROGRAMS. (a) A  
42 trial court that is a district court or a district court in the  
43 county in which the trial court is located may, with the consent of

1 the attorney representing the state, enter an expunction order for  
2 a person entitled to expunction under Article 55A.053(a)(2)(A) not  
3 later than the 30th day after the date the court, as applicable:

4 (1) dismisses the case following the person's  
5 successful completion of a veterans treatment court program created  
6 under Chapter 124, Government Code, or former law; or

7 (2) receives the information regarding the dismissal.

8 (b) A trial court that is a district court or a district  
9 court in the county in which the trial court is located may, with  
10 the consent of the attorney representing the state, enter an  
11 expunction order for a person entitled to expunction under Article  
12 55A.053(a)(2)(B) not later than the 30th day after the date the  
13 court, as applicable:

14 (1) dismisses the case following the person's  
15 successful completion of a mental health court program created  
16 under Chapter 125, Government Code, or former law; or

17 (2) receives the information regarding the dismissal.

18 (c) Notwithstanding any other law, a court that enters an  
19 expunction order under this article may not charge any fee or assess  
20 any cost for the expunction. (Code Crim. Proc., Art. 55.02, Secs.  
21 1a(a-1), (a-2).)

22 Source Law

23 (a-1) A trial court dismissing a case following  
24 a person's successful completion of a veterans  
25 treatment court program created under Chapter 124,  
26 Government Code, or former law, if the trial court is a  
27 district court, or a district court in the county in  
28 which the trial court is located may, with the consent  
29 of the attorney representing the state, enter an order  
30 of expunction for a person entitled to expunction  
31 under Article 55.01(a)(2)(A)(ii)(a) not later than the  
32 30th day after the date the court dismisses the case or  
33 receives the information regarding that dismissal, as  
34 applicable. Notwithstanding any other law, a court  
35 that enters an order for expunction under this  
36 subsection may not charge any fee or assess any cost  
37 for the expunction.

38 (a-2) A trial court dismissing a case following  
39 a person's successful completion of a mental health  
40 court program created under Chapter 125, Government  
41 Code, or former law, if the trial court is a district  
42 court, or a district court in the county in which the  
43 trial court is located may, with the consent of the  
44 attorney representing the state, enter an order of  
45 expunction for a person entitled to expunction under

1 Article 55.01(a)(2)(A)(ii)(b) not later than the 30th  
2 day after the date the court dismisses the case or  
3 receives the information regarding that dismissal, as  
4 applicable. Notwithstanding any other law, a court  
5 that enters an order for expunction under this  
6 subsection may not charge any fee or assess any cost  
7 for the expunction.

8 Revised Law

9 Art. 55A.204. DUTIES OF ATTORNEY REPRESENTING STATE  
10 REGARDING EXPUNCTION ORDER. The attorney representing the state  
11 shall prepare an expunction order under Article 55A.202 or 55A.203  
12 for the court's signature and notify the Texas Department of  
13 Criminal Justice if the person who is the subject of the order is in  
14 the custody of the department. (Code Crim. Proc., Art. 55.02, Sec.  
15 1a(b).)

16 Source Law

17 (b) The attorney for the state shall:  
18 (1) prepare an expunction order under this  
19 section for the court's signature; and  
20 (2) notify the Texas Department of  
21 Criminal Justice if the person is in the custody of the  
22 department.

23 Revisor's Note

24 Section 1a(b), Article 55.02, Code of Criminal  
25 Procedure, requires the attorney representing the  
26 state to prepare an expunction order under that  
27 section and to notify the Texas Department of Criminal  
28 Justice if the person is in the custody of the  
29 department. The provisions of Section 1a relating to  
30 entering an expunction order are revised as Articles  
31 55A.202 and 55A.203 of this chapter, and the revised  
32 law is drafted accordingly. The revised law adds "who  
33 is the subject of the order" because it is clear from  
34 the context that the notice given to the department  
35 concerns the person who is the subject of the  
36 expunction order under Section 1a.

37 Revised Law

38 Art. 55A.205. REQUIRED CONTENT OF EXPUNCTION ORDER. In an  
39 expunction order entered under Article 55A.202 or 55A.203, the  
40 court shall:

1 (1) provide a listing of each official, agency, or  
2 other entity of this state or political subdivision of this state  
3 and each private entity that there is reason to believe has any  
4 record or file that is subject to the order; and

5 (2) require that:

6 (A) the Texas Department of Criminal Justice send  
7 to the court any documents delivered to the department under  
8 Section 8(a), Article 42.09; and

9 (B) the Department of Public Safety and the Texas  
10 Department of Criminal Justice delete or redact, as appropriate,  
11 from their public records all index references to the records and  
12 files that are subject to the expunction order. (Code Crim. Proc.,  
13 Art. 55.02, Sec. 1a(c).)

14 Source Law

15 (c) The court shall include in an expunction  
16 order under this section a listing of each official,  
17 agency, or other entity of this state or political  
18 subdivision of this state and each private entity that  
19 there is reason to believe has any record or file that  
20 is subject to the order. The court shall also provide  
21 in an expunction order under this section that:

22 (1) the Texas Department of Criminal  
23 Justice shall send to the court the documents  
24 delivered to the department under Section 8(a),  
25 Article 42.09; and

26 (2) the Department of Public Safety and  
27 the Texas Department of Criminal Justice shall delete  
28 or redact, as appropriate, from their public records  
29 all index references to the records and files that are  
30 subject to the expunction order.

31 Revisor's Note

32 Section 1a(c), Article 55.02, Code of Criminal  
33 Procedure, requires the court to include certain  
34 information and directives in an expunction order  
35 under that section. The provisions of Section 1a  
36 requiring or permitting a court to enter an expunction  
37 order are revised as Articles 55A.202 and 55A.203 of  
38 this chapter, and the revised law is drafted  
39 accordingly.

40 Revised Law

41 Art. 55A.206. REQUIRED RETENTION OF CERTAIN DOCUMENTS BY

1 COURT. The court shall retain any documents sent to the court under  
2 Article 55A.205(2)(A) until the limitations period has expired for  
3 any civil case or proceeding relating to the wrongful imprisonment  
4 of the person who is the subject of the expunction order. (Code  
5 Crim. Proc., Art. 55.02, Sec. 1a(d).)

6 Source Law

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

12 SUBCHAPTER F. GENERAL PROCEDURES FOR SEEKING ENTRY OF EXPUNCTION

13 ORDER

14 Revised Law

15 Art. 55A.251. FILING OF PETITION. A person who is entitled  
16 to expunction of records and files under Article 55A.002, 55A.004,  
17 or 55A.005 or Subchapter B, or a person who is eligible for  
18 expunction of records and files under Article 55A.101, may, subject  
19 to Article 55A.252, 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. (Code  
23 Crim. Proc., Art. 55.02, Sec. 2(a); New.)

24 Source Law

25 Sec. 2. (a) A person who is entitled to  
26 expunction of records and files under Article  
27 55.01(a)(1)(A), 55.01(a)(1)(B)(i), 55.01(a)(1)(C), or  
28 55.01(a)(2) or a person who is eligible for expunction  
29 of records and files under Article 55.01(b) may file an  
30 ex parte petition for expunction in a district court  
31 for the county in which:

- 32 (1) the petitioner was arrested; or  
33 (2) the offense was alleged to have  
34 occurred.

35 Revisor's Note

36 Section 2(a), Article 55.02, Code of Criminal  
37 Procedure, provides that a person may file an ex parte  
38 petition for expunction in certain district courts.  
39 The revised law adds "subject to Article 55A.252" for  
40 the convenience of the reader because Section 2(a-1)

1 of Article 55.02, revised as Article 55A.252 of this  
2 chapter, provides that if the arrest for which  
3 expunction is sought is an offense punishable as a fine  
4 only, the person may file the ex parte petition in  
5 certain justice or municipal courts.

6 Revised Law

7 Art. 55A.252. FILING CERTAIN PETITIONS IN JUSTICE OR  
8 MUNICIPAL COURT. If the arrest for which expunction is sought is  
9 for an offense punishable by fine only, a person who is entitled to  
10 expunction of records and files under Article 55A.002, 55A.003,  
11 55A.004, or 55A.005 or Subchapter B, or a person who is eligible for  
12 expunction of records and files under Article 55A.101(a) may file  
13 an ex parte petition for expunction in a justice court or a  
14 municipal court of record in the county in which:

15 (1) the petitioner was arrested; or

16 (2) the offense was alleged to have occurred. (Code  
17 Crim. Proc., Art. 55.02, Sec. 2(a-1).)

18 Source Law

19 (a-1) If the arrest for which expunction is  
20 sought is for an offense punishable by fine only, a  
21 person who is entitled to expunction of records and  
22 files under Article 55.01(a) or a person who is  
23 eligible for expunction of records and files under  
24 Article 55.01(b) may file an ex parte petition for  
25 expunction in a justice court or a municipal court of  
26 record in the county in which:

27 (1) the petitioner was arrested; or

28 (2) the offense was alleged to have  
29 occurred.

30 Revised Law

31 Art. 55A.253. CONTENTS OF PETITION. An ex parte petition  
32 filed under Article 55A.251, 55A.252, or 55A.257 must be verified  
33 and must include, with respect to the person who is the subject of  
34 the petition, the following or an explanation for why one or more of  
35 the following is not included:

36 (1) the person's:

37 (A) full name;

38 (B) sex;

39 (C) race;



1 (D) date of birth;  
2 (E) driver's license number;  
3 (F) social security number; and  
4 (G) address at the time of the arrest;  
5 (2) the offense charged;  
6 (3) the date the offense charged was alleged to have  
7 been committed;  
8 (4) the date of arrest;  
9 (5) the name of the county of arrest and if the arrest  
10 occurred in a municipality, the name of the municipality;  
11 (6) the name of the arresting agency;  
12 (7) the case number and court of offense; and  
13 (8) together with the applicable physical or e-mail  
14 addresses, a list of all:  
15 (A) law enforcement agencies, jails or other  
16 detention facilities, magistrates, courts, attorneys representing  
17 the state, correctional facilities, central state depositories of  
18 criminal records, and other officials or agencies or other entities  
19 of this state or of any political subdivision of this state;  
20 (B) central federal depositories of criminal  
21 records that the person who is the subject of the petition has  
22 reason to believe have records or files that are subject to  
23 expunction; and  
24 (C) private entities that compile and  
25 disseminate for compensation criminal history record information  
26 that the person who is the subject of the petition has reason to  
27 believe have information related to records or files that are  
28 subject to expunction. (Code Crim. Proc., Art. 55.02, Secs. 2(b),  
29 (f).)

30 Source Law

31 (b) A petition filed under Subsection (a) or  
32 (a-1) must be verified and must include the following  
33 or an explanation for why one or more of the following  
34 is not included:  
35 (1) the petitioner's:  
36 (A) full name;  
37 (B) sex;

1 (C) race;  
2 (D) date of birth;  
3 (E) driver's license number;  
4 (F) social security number; and  
5 (G) address at the time of the  
6 arrest;  
7 (2) the offense charged against the  
8 petitioner;  
9 (3) the date the offense charged against  
10 the petitioner was alleged to have been committed;  
11 (4) the date the petitioner was arrested;  
12 (5) the name of the county where the  
13 petitioner was arrested and if the arrest occurred in a  
14 municipality, the name of the municipality;  
15 (6) the name of the agency that arrested  
16 the petitioner;  
17 (7) the case number and court of offense;  
18 and  
19 (8) together with the applicable physical  
20 or e-mail addresses, a list of all:  
21 (A) law enforcement agencies, jails  
22 or other detention facilities, magistrates, courts,  
23 prosecuting attorneys, correctional facilities,  
24 central state depositories of criminal records, and  
25 other officials or agencies or other entities of this  
26 state or of any political subdivision of this state;  
27 (B) central federal depositories of  
28 criminal records that the petitioner has reason to  
29 believe have records or files that are subject to  
30 expunction; and  
31 (C) private entities that compile and  
32 disseminate for compensation criminal history record  
33 information that the petitioner has reason to believe  
34 have information related to records or files that are  
35 subject to expunction.

36 (f) An ex parte petition filed under Subsection  
37 (e) must be verified and must include the following or  
38 an explanation for why one or more of the following is  
39 not included:  
40 (1) the person's:  
41 (A) full name;  
42 (B) sex;  
43 (C) race;  
44 (D) date of birth;  
45 (E) driver's license number;  
46 (F) social security number; and  
47 (G) address at the time of the  
48 arrest;  
49 (2) the offense charged against the  
50 person;  
51 (3) the date the offense charged against  
52 the person was alleged to have been committed;  
53 (4) the date the person was arrested;  
54 (5) the name of the county where the person  
55 was arrested and if the arrest occurred in a  
56 municipality, the name of the municipality;  
57 (6) the name of the agency that arrested  
58 the person;  
59 (7) the case number and court of offense;  
60 and  
61 (8) together with the applicable physical  
62 or e-mail addresses, a list of all:  
63 (A) law enforcement agencies, jails  
64 or other detention facilities, magistrates, courts,  
65 prosecuting attorneys, correctional facilities,  
66 central state depositories of criminal records, and  
67 other officials or agencies or other entities of this

1 state or of any political subdivision of this state;  
2 (B) central federal depositories of  
3 criminal records that the person has reason to believe  
4 have records or files that are subject to expunction;  
5 and  
6 (C) private entities that compile and  
7 disseminate for compensation criminal history record  
8 information that the person has reason to believe have  
9 information relating to records or files that are  
10 subject to expunction.

11 Revisor's Note

12 (1) Section 2(b), Article 55.02, Code of  
13 Criminal Procedure, specifies the information that  
14 must be included in a "petition" filed under  
15 Subsection (a) or (a-1) of that section. The revised  
16 law substitutes "ex parte petition" for "petition" for  
17 consistency with the terminology used in Sections 2(a)  
18 and (a-1) of that article, revised as Articles 55A.251  
19 and 55A.252 of this chapter.

20 (2) Section 2(b), Article 55.02, Code of  
21 Criminal Procedure, specifies the information that  
22 must be included in a petition for expunction filed by  
23 a petitioner who is entitled to or eligible for the  
24 expunction. Section 2(f), Article 55.02, Code of  
25 Criminal Procedure, specifies the information that  
26 must be included in a petition for expunction filed  
27 under Section 2(e) of that article, revised as Article  
28 55A.257 of this chapter, by the Department of Public  
29 Safety on behalf of a person who is entitled to or  
30 eligible for the expunction. For the convenience of  
31 the reader, the revised law only lists the information  
32 that must be included in a petition once as the content  
33 of the petition is the same in each scenario and uses  
34 the phrase "person who is the subject of the petition"  
35 to describe both a petitioner and a person on whose  
36 behalf a petition is filed.

37 Revised Law

38 Art. 55A.254. HEARING; NOTICE. (a) The court shall set a  
39 hearing on an ex parte petition for expunction not earlier than 30

1 days from the filing of the petition and shall give to each official  
2 or agency or other governmental entity named in the petition  
3 reasonable notice of the hearing by:

- 4 (1) certified mail, return receipt requested; or
- 5 (2) secure electronic mail, electronic transmission,  
6 or facsimile transmission.

7 (b) An entity described by Subsection (a) may be represented  
8 by the attorney responsible for providing the entity with legal  
9 representation in other matters.

10 (c) Any returned receipts received by the clerk from notices  
11 of the hearing shall be maintained in the file on the proceedings  
12 under Article 55A.356(b). (Code Crim. Proc., Art. 55.02, Secs.  
13 2(c), (c-1); Sec. 3(d) (part).)

14 Source Law

15 [Sec. 2]

16 (c) The court shall set a hearing on the matter  
17 no sooner than thirty days from the filing of the  
18 petition and shall give to each official or agency or  
19 other governmental entity named in the petition  
20 reasonable notice of the hearing by:

- 21 (1) certified mail, return receipt  
22 requested; or
- 23 (2) secure electronic mail, electronic  
24 transmission, or facsimile transmission.

25 (c-1) An entity described by Subsection (c) may  
26 be represented by the attorney responsible for  
27 providing the entity with legal representation in  
28 other matters.

29 [Sec. 3]

30 (d) Any returned receipts received by the clerk  
31 from notices of the hearing and . . . shall be  
32 maintained in the file on the proceedings under this  
33 chapter.

34 Revisor's Note

35 (1) Section 2(c), Article 55.02, Code of  
36 Criminal Procedure, refers to a hearing on "the  
37 matter." It is clear from the context that this is a  
38 reference to the ex parte petitions for expunction  
39 that may be filed under Sections 2(a) and (a-1),  
40 revised as Articles 55A.251 and 55A.252 of this  
41 chapter. The revised law is drafted accordingly.

42 (2) Section 3(d), Article 55.02, Code of

1 Criminal Procedure, refers to "the file on the  
2 proceedings under this chapter." The provision  
3 relating to a court's records concerning expunction  
4 proceedings is in Section 5(c), Article 55.02, Code of  
5 Criminal Procedure, revised in relevant part as  
6 Article 55A.356(b) of this chapter, and the revised  
7 law substitutes a cross-reference to Article  
8 55A.356(b) for the reference to "chapter" for the  
9 convenience of the reader.

10 Revised Law

11 Art. 55A.255. ENTRY OF EXPUNCTION ORDER. If the court  
12 finds that the person who is the subject of an ex parte petition  
13 filed under Article 55A.251, 55A.252, or 55A.257 is entitled to  
14 expunction of any records and files that are the subject of the  
15 petition, the court shall enter an order directing expunction.  
16 (Code Crim. Proc., Art. 55.02, Sec. 2(d).)

17 Source Law

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

23 Revisor's Note

24 Section 2(d), Article 55.02, Code of Criminal  
25 Procedure, refers to a "petitioner, or a person for  
26 whom an ex parte petition is filed." The revised law  
27 substitutes "person who is the subject of an ex parte  
28 petition" for the quoted language for clarity and  
29 consistency with the other references in this chapter.

30 Revised Law

31 Art. 55A.256. APPLICATION FOR EXPUNCTION BASED ON MISTAKEN  
32 IDENTITY. (a) A person who is entitled to the expunction of  
33 information contained in records and files under Article 55A.006  
34 may file an application for expunction with the attorney  
35 representing the state in the prosecution of felonies in the county  
36 in which the person resides.

1 (b) The application must be verified, include authenticated  
2 fingerprint records of the applicant, and include the following or  
3 an explanation for why one or more of the following is not included:

4 (1) the applicant's:

5 (A) full name;

6 (B) sex;

7 (C) race;

8 (D) date of birth;

9 (E) driver's license number;

10 (F) social security number; and

11 (G) address at the time of the applicable arrest;

12 (2) the following information regarding the arrest:

13 (A) the date of arrest;

14 (B) the offense charged against the person  
15 arrested;

16 (C) the name of the county or municipality in  
17 which the arrest occurred; and

18 (D) the name of the arresting agency; and

19 (3) a statement, as appropriate, that the applicant:

20 (A) was arrested solely as a result of  
21 identifying information that was inaccurate due to a clerical  
22 error; or

23 (B) is not the person arrested and for whom the  
24 arrest records and files were created and did not give the arrested  
25 person consent to falsely identify himself or herself as the  
26 applicant.

27 (c) After verifying the allegations in the application, the  
28 attorney representing the state shall:

29 (1) include on the application information regarding  
30 the arrest that was requested of the applicant but was unknown by  
31 the applicant;

32 (2) forward a copy of the application to the district  
33 court for the county;

34 (3) together with the applicable physical or e-mail

1 addresses, attach to the copy a list of all:

2 (A) law enforcement agencies, jails or other  
3 detention facilities, magistrates, courts, attorneys representing  
4 the state, correctional facilities, central state depositories of  
5 criminal records, and other officials or agencies or other entities  
6 of this state or of any political subdivision of this state;

7 (B) central federal depositories of criminal  
8 records that are reasonably likely to have records or files  
9 containing information that is subject to expunction; and

10 (C) private entities that compile and  
11 disseminate for compensation criminal history record information  
12 that are reasonably likely to have records or files containing  
13 information that is subject to expunction; and

14 (4) request the court to enter an order directing  
15 expunction based on an entitlement to expunction under Article  
16 55A.006.

17 (d) On receipt of a request under Subsection (c), the court  
18 shall, without holding a hearing on the matter, enter a final order  
19 directing expunction. (Code Crim. Proc., Art. 55.02, Sec. 2a.)

20 Source Law

21 Sec. 2a. (a) A person who is entitled to  
22 expunction of information contained in records and  
23 files under Article 55.01(d) may file an application  
24 for expunction with the attorney representing the  
25 state in the prosecution of felonies in the county in  
26 which the person resides.

27 (b) The application must be verified, include  
28 authenticated fingerprint records of the applicant,  
29 and include the following or an explanation for why one  
30 or more of the following is not included:

31 (1) the applicant's full name, sex, race,  
32 date of birth, driver's license number, social  
33 security number, and address at the time of the  
34 applicable arrest;

35 (2) the following information regarding  
36 the arrest:

37 (A) the date of arrest;  
38 (B) the offense charged against the  
39 person arrested;

40 (C) the name of the county or  
41 municipality in which the arrest occurred; and

42 (D) the name of the arresting agency;  
43 and

44 (3) a statement, as appropriate, that the  
45 applicant:

46 (A) was arrested solely as a result  
47 of identifying information that was inaccurate due to

1 a clerical error; or

2 (B) is not the person arrested and  
3 for whom the arrest records and files were created and  
4 did not give the arrested person consent to falsely  
5 identify himself or herself as the applicant.

6 (c) After verifying the allegations in an  
7 application received under Subsection (a), the  
8 attorney representing the state shall:

9 (1) include on the application information  
10 regarding the arrest that was requested of the  
11 applicant but was unknown by the applicant;

12 (2) forward a copy of the application to  
13 the district court for the county;

14 (3) together with the applicable physical  
15 or e-mail addresses, attach to the copy a list of all:

16 (A) law enforcement agencies, jails  
17 or other detention facilities, magistrates, courts,  
18 prosecuting attorneys, correctional facilities,  
19 central state depositories of criminal records, and  
20 other officials or agencies or other entities of this  
21 state or of any political subdivision of this state;

22 (B) central federal depositories of  
23 criminal records that are reasonably likely to have  
24 records or files containing information that is  
25 subject to expunction; and

26 (C) private entities that compile and  
27 disseminate for compensation criminal history record  
28 information that are reasonably likely to have records  
29 or files containing information that is subject to  
30 expunction; and

31 (4) request the court to enter an order  
32 directing expunction based on an entitlement to  
33 expunction under Article 55.01(d).

34 (d) On receipt of a request under Subsection  
35 (c), the court shall, without holding a hearing on the  
36 matter, enter a final order directing expunction.

37 Revised Law

38 Art. 55A.257. DEPARTMENT OF PUBLIC SAFETY MAY FILE PETITION  
39 ON PERSON'S BEHALF. The director of the Department of Public  
40 Safety or the director's authorized representative may file on  
41 behalf of a person described by Article 55A.251 or 55A.256 an ex  
42 parte petition for expunction in a district court for the county in  
43 which:

44 (1) the person was arrested; or

45 (2) the offense was alleged to have occurred. (Code  
46 Crim. Proc., Art. 55.02, Sec. 2(e).)

47 Source Law

48 (e) The director of the Department of Public  
49 Safety or the director's authorized representative may  
50 file on behalf of a person described by Subsection (a)  
51 of this section or by Section 2a an ex parte petition  
52 for expunction in a district court for the county in  
53 which:

54 (1) the person was arrested; or

55 (2) the offense was alleged to have  
56 occurred.



1 Revised Law

2 Art. 55A.258. EXPUNCTION ON BEHALF OF DECEASED PERSON. (a)

3 In this article, "close relative of a deceased person" means the  
4 grandparent, parent, spouse, or adult brother, sister, or child of  
5 a deceased person.

6 (b) A close relative of a deceased person who, if not  
7 deceased, would be entitled to expunction of records and files  
8 under Subchapter A, B, or C may file on behalf of the deceased  
9 person an ex parte petition for expunction under Article 55A.251 or  
10 55A.252 or an application for expunction under Article 55A.256, as  
11 applicable. If the court finds that the deceased person would be  
12 entitled to expunction of any record or file that is the subject of  
13 the petition, the court shall enter an order directing expunction.

14 (Code Crim. Proc., Art. 55.011.)

15 Source Law

16 Art. 55.011. RIGHT OF CLOSE RELATIVE TO SEEK  
17 EXPUNCTION ON BEHALF OF DECEASED PERSON. (a) In this  
18 article, "close relative of a deceased person" means  
19 the grandparent, parent, spouse, or adult brother,  
20 sister, or child of a deceased person.

21 (b) A close relative of a deceased person who,  
22 if not deceased, would be entitled to expunction of  
23 records and files under Article 55.01 may file on  
24 behalf of the deceased person an ex parte petition for  
25 expunction under Section 2 or 2a, Article 55.02. If  
26 the court finds that the deceased person would be  
27 entitled to expunction of any record or file that is  
28 the subject of the petition, the court shall enter an  
29 order directing expunction.

30 Revisor's Note

31 (1) Article 55.011(b), Code of Criminal  
32 Procedure, provides that a close relative of a  
33 deceased person who would be entitled to expunction of  
34 records and files under Article 55.01, Code of  
35 Criminal Procedure, may file on behalf of the deceased  
36 person an ex parte petition for expunction under  
37 Section 2 or 2a, Article 55.02, Code of Criminal  
38 Procedure. The provisions of Article 55.01 specifying  
39 when a person is entitled to or eligible for an  
40 expunction or when an expunction may be granted are

1 revised as Subchapters A, B, and C of this chapter.  
2 The provisions of Section 2 of Article 55.02 relating  
3 to the filing of a petition for expunction are revised  
4 as Articles 55A.251 and 55A.252 of this chapter. The  
5 revised law is drafted accordingly.

6 (2) Article 55.011(b), Code of Criminal  
7 Procedure, refers to the filing of "an ex parte  
8 petition for expunction under Section 2 or 2a, Article  
9 55.02." Under Section 2a, a person files an  
10 application for expunction with the attorney  
11 representing the state, not a petition for expunction  
12 as under Section 2. The revised law is drafted  
13 accordingly.

#### 14 SUBCHAPTER G. EXPUNCTION ORDER

##### 15 Revised Law

16 Art. 55A.301. REQUIRED CONTENT. (a) An expunction order  
17 entered by a court under Subchapter E or F must have attached and  
18 incorporate by reference a copy of the judgment of acquittal, if  
19 any, and must include:

20 (1) the following information on the person who is the  
21 subject of the expunction order:

- 22 (A) full name;
- 23 (B) sex;
- 24 (C) race;
- 25 (D) date of birth;
- 26 (E) driver's license number; and
- 27 (F) social security number;

28 (2) the offense charged against the person who is the  
29 subject of the expunction order, if any;

30 (3) the date of the applicable arrest;

31 (4) the case number and court of offense, if any; and

32 (5) the incident number assigned to the individual  
33 incident of arrest under Article 66.251(b)(1) by the Department of  
34 Public Safety.

1 (b) An expunction order issued by a court under Subchapter E  
2 or F must require any state agency that sent information concerning  
3 the arrest to a central federal depository to request the  
4 depository to return all records and files subject to the order.  
5 (Code Crim. Proc., Art. 55.02, Secs. 3(a) (part), (b).)

6 Source Law

7 Sec. 3. (a) In an order of expunction issued  
8 under this article, the court shall require any state  
9 agency that sent information concerning the arrest to  
10 a central federal depository to request the depository  
11 to return all records and files subject to the order of  
12 expunction. . . .

13 (b) The order of expunction entered by the court  
14 shall have attached and incorporate by reference a  
15 copy of the judgment of acquittal and shall include:

16 (1) the following information on the  
17 person who is the subject of the expunction order:

- 18 (A) full name;
- 19 (B) sex;
- 20 (C) race;
- 21 (D) date of birth;
- 22 (E) driver's license number; and
- 23 (F) social security number;

24 (2) the offense charged against the person  
25 who is the subject of the expunction order;

26 (3) the date the person who is the subject  
27 of the expunction order was arrested;

28 (4) the case number and court of offense;  
29 and

30 (5) the tracking incident number (TRN)  
31 assigned to the individual incident of arrest under  
32 Article 66.251(b)(1) by the Department of Public  
33 Safety.

34 Revisor's Note

35 (1) Section 3(a), Article 55.02, Code of  
36 Criminal Procedure, prescribes certain content for an  
37 "order of expunction issued under this article."

38 Section 3(b), Article 55.02, Code of Criminal  
39 Procedure, refers to "[t]he order of expunction  
40 entered by the court," meaning the order described by  
41 Section 3(a). The provisions of Article 55.02, Code of  
42 Criminal Procedure, that authorize or require a court  
43 to issue or enter an expunction order are revised in  
44 Subchapters E and F of this chapter. The revised law  
45 is drafted accordingly.

46 (2) Section 3(b), Article 55.02, Code of  
47 Criminal Procedure, requires an expunction order

1 ordered by the court to include a copy of the judgment  
2 of acquittal, the offense charged against the person  
3 who is the subject of the expunction order, and the  
4 case number and court of offense. The revised law adds  
5 "if any" to these requirements for the convenience of  
6 the reader because Article 55.01, Code of Criminal  
7 Procedure, revised in relevant part as Subchapters A,  
8 B, and C of this chapter, provides many different  
9 grounds for expunction apart from acquittal, including  
10 grounds for cases in which no charge may have been  
11 filed.

12 (3) Section 3(b)(3), Article 55.02, Code of  
13 Criminal Procedure, requires an expunction order to  
14 include the date "the person who is the subject of the  
15 expunction order was arrested." The revised law  
16 substitutes "of the applicable arrest" for the quoted  
17 language because a person who is the subject of an  
18 expunction order will not necessarily have been  
19 arrested. (See Article 55.01(d)(2), revised as Article  
20 55A.006(2) of this chapter.)

21 Revised Law

22 Art. 55A.302. RETENTION OF CERTAIN RECORDS AFTER  
23 EXPUNCTION. (a) If the state establishes that the person who is  
24 the subject of an expunction order is still subject to conviction  
25 for an offense arising out of the transaction for which the person  
26 was arrested because the limitations period has not expired and  
27 there is reasonable cause to believe that the state may proceed  
28 against the person for the offense, the court may provide in the  
29 order that the law enforcement agency and the attorney representing  
30 the state responsible for investigating the offense retain any  
31 records and files that are necessary to the investigation.

32 (b) In the case of a person who is the subject of an  
33 expunction order on the basis of an acquittal, the court may provide  
34 in the expunction order that the law enforcement agency and the

1 attorney representing the state retain records and files if:

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

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

7 (A) another criminal case, including a  
8 prosecution, motion to adjudicate or revoke community supervision,  
9 parole revocation hearing, mandatory supervision revocation  
10 hearing, punishment hearing, or bond hearing; or

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

13 (c) The court shall provide in the expunction order that the  
14 applicable law enforcement agency and attorney representing the  
15 state may retain the arrest records and files of any person who  
16 becomes entitled to an expunction of those records and files based  
17 on the expiration of a period described by Article 55A.052(a)(1),  
18 (2), or (3), but without the certification of the attorney  
19 representing the state as described by Article 55A.052(a)(4).

20 (d) Articles 55A.401 and 55A.402 apply to records and files  
21 retained under this article unless:

22 (1) the person who is the subject of the expunction  
23 order is again arrested for or charged with an offense arising out  
24 of the transaction for which the person was arrested; or

25 (2) the court provides for the retention of records  
26 and files under Subsection (b) or (c). (Code Crim. Proc., Art.  
27 55.02, Sec. 4.)

28 Source Law

29 Sec. 4. (a) If the state establishes that the  
30 person who is the subject of an expunction order is  
31 still subject to conviction for an offense arising out  
32 of the transaction for which the person was arrested  
33 because the statute of limitations has not run and  
34 there is reasonable cause to believe that the state may  
35 proceed against the person for the offense, the court  
36 may provide in its expunction order that the law  
37 enforcement agency and the prosecuting attorney  
38 responsible for investigating the offense may retain  
39 any records and files that are necessary to the

1 investigation.

2 (a-1) The court shall provide in its expunction  
3 order that the applicable law enforcement agency and  
4 prosecuting attorney may retain the arrest records and  
5 files of any person who becomes entitled to an  
6 expunction of those records and files based on the  
7 expiration of a period described by Article  
8 55.01(a)(2)(A)(i)(a), (b), or (c), but without the  
9 certification of the prosecuting attorney as described  
10 by Article 55.01(a)(2)(A)(i)(d).

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

16 (1) the records and files are necessary to  
17 conduct a subsequent investigation and prosecution of  
18 a person other than the person who is the subject of  
19 the expunction order; or

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

22 (A) another criminal case, including  
23 a prosecution, motion to adjudicate or revoke  
24 community supervision, parole revocation hearing,  
25 mandatory supervision revocation hearing, punishment  
26 hearing, or bond hearing; or

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

29 (b) Unless the person who is the subject of the  
30 expunction order is again arrested for or charged with  
31 an offense arising out of the transaction for which the  
32 person was arrested or unless the court provides for  
33 the retention of records and files under Subsection  
34 (a-1) or (a-2), the provisions of Articles 55.03 and  
35 55.04 apply to files and records retained under this  
36 section.

37 Revised Law

38 Art. 55A.303. APPEAL. A person who is the subject of an  
39 expunction order issued under Subchapter E or F or an agency  
40 protesting the expunction may appeal the court's decision in the  
41 same manner as in other civil cases. (Code Crim. Proc., Art. 55.02,  
42 Sec. 3(a) (part).)

43 Source Law

44 (a) . . . The person who is the subject of the  
45 expunction order or an agency protesting the  
46 expunction may appeal the court's decision in the same  
47 manner as in other civil cases.

48 Revisor's Note

49 The second sentence of Section 3(a), Article  
50 55.02, Code of Criminal Procedure, refers to "the  
51 expunction order." It is clear from the context that  
52 this is a reference to "an order of expunction issued  
53 under this article" from the first sentence of Section

1 3(a), revised as Article 55A.301(b) of this chapter.  
2 The revised law adds a reference to Subchapters E and F  
3 for the reason stated in Revisor's Note (1) to Article  
4 55A.301.

5 SUBCHAPTER H. NOTICE AND DISPOSITION OF RECORDS FOLLOWING  
6 EXPUNCTION ORDER

7 Revised Law

8 Art. 55A.351. NOTICE OF EXPUNCTION ORDER. (a) When an  
9 expunction order issued under Subchapter E or F is final, the clerk  
10 of the court shall send a certified copy of the order to the Crime  
11 Records Service of the Department of Public Safety and to each  
12 official or agency or other governmental entity of this state or of  
13 any political subdivision of this state named in the order.

14 (b) The certified copy of the order must be sent by secure  
15 electronic mail, electronic transmission, or facsimile  
16 transmission or otherwise by certified mail, return receipt  
17 requested.

18 (c) In sending the order under Subsection (a) to a  
19 governmental entity named in the order, the clerk may elect to  
20 substitute hand delivery for certified mail, but the clerk must  
21 receive a receipt for that hand-delivered order.

22 (d) Any returned receipts received by the clerk from copies  
23 of the order shall be maintained in the file on the proceedings  
24 under Article 55A.356(b). (Code Crim. Proc., Art. 55.02, Secs.  
25 3(c), (d) (part).)

26 Source Law

27 (c) When the order of expunction is final, the  
28 clerk of the court shall send a certified copy of the  
29 order to the Crime Records Service of the Department of  
30 Public Safety and to each official or agency or other  
31 governmental entity of this state or of any political  
32 subdivision of this state named in the order. The  
33 certified copy of the order must be sent by secure  
34 electronic mail, electronic transmission, or  
35 facsimile transmission or otherwise by certified mail,  
36 return receipt requested. In sending the order to a  
37 governmental entity named in the order, the clerk may  
38 elect to substitute hand delivery for certified mail  
39 under this subsection, but the clerk must receive a  
40 receipt for that hand-delivered order.

1 (d) Any returned receipts received by the clerk  
2 from . . . copies of the order shall be maintained in  
3 the file on the proceedings under this chapter.

4 Revisor's Note

5 (1) Section 3(c), Article 55.02, Code of  
6 Criminal Procedure, refers to "the order of  
7 expunction." It is clear from the context that this is  
8 a reference to "an order of expunction issued under  
9 this article" from the first sentence of Section 3(a),  
10 revised as Article 55A.301(b) of this chapter. The  
11 revised law adds a reference to Subchapters E and F for  
12 the reason stated in Revisor's Note (1) to Article  
13 55A.301.

14 (2) Section 3(d), Article 55.02, Code of  
15 Criminal Procedure, refers to "the file on the  
16 proceedings under this chapter." The revised law  
17 substitutes a cross-reference to Article 55A.356(b)  
18 for the reason stated in Revisor's Note (2) to Article  
19 55A.254.

20 Revised Law

21 Art. 55A.352. DUTY OF DEPARTMENT OF PUBLIC SAFETY. (a) In  
22 this article, "department" means the Department of Public Safety.

23 (b) The department shall notify any central federal  
24 depository of criminal records by any means, including secure  
25 electronic mail, electronic transmission, or facsimile  
26 transmission, of an order received under Article 55A.351(a) with an  
27 explanation of the effect of the order and a request that the  
28 depository, as appropriate, either:

29 (1) destroy or return to the court the records in  
30 possession of the depository that are subject to the order,  
31 including any information with respect to the order; or

32 (2) comply with Article 55A.354 pertaining to  
33 information contained in records and files of a person entitled to  
34 expunction under Article 55A.006.

35 (c) The department shall provide, by secure electronic



1 mail, electronic transmission, or facsimile transmission, notice  
2 of the order to any private entity that is named in the order or that  
3 purchases criminal history record information from the department.

4 (d) The notice under Subsection (c) must include an  
5 explanation of the effect of the order and a request that the  
6 private entity destroy any information in the possession of the  
7 entity that is subject to the order.

8 (e) The department may charge to a private entity that  
9 purchases criminal history record information from the department a  
10 fee in an amount sufficient to recover costs incurred by the  
11 department in providing notice under Subsection (c). (Code Crim.  
12 Proc., Art. 55.02, Secs. 3(c-1), (c-2); New.)

13 Source Law

14 (c-1) The Department of Public Safety shall  
15 notify any central federal depository of criminal  
16 records by any means, including secure electronic  
17 mail, electronic transmission, or facsimile  
18 transmission, of the order with an explanation of the  
19 effect of the order and a request that the depository,  
20 as appropriate, either:

21 (1) destroy or return to the court the  
22 records in possession of the depository that are  
23 subject to the order, including any information with  
24 respect to the order; or

25 (2) comply with Section 5(f) pertaining to  
26 information contained in records and files of a person  
27 entitled to expunction under Article 55.01(d).

28 (c-2) The Department of Public Safety shall also  
29 provide, by secure electronic mail, electronic  
30 transmission, or facsimile transmission, notice of the  
31 order to any private entity that is named in the order  
32 or that purchases criminal history record information  
33 from the department. The notice must include an  
34 explanation of the effect of the order and a request  
35 that the entity destroy any information in the  
36 possession of the entity that is subject to the order.  
37 The department may charge to a private entity that  
38 purchases criminal history record information from the  
39 department a fee in an amount sufficient to recover  
40 costs incurred by the department in providing notice  
41 under this subsection to the entity.

42 Revisor's Note

43 (1) The revised law adds the definition of  
44 "department" for the convenience of the reader and to  
45 avoid the frequent, unnecessary repetition of the  
46 substance of the definition.

47 (2) Section 3(c-1), Article 55.02, Code of

1 Criminal Procedure, refers to "the order." It is clear  
2 from the context that this is a reference to the  
3 expunction order sent by the clerk of the issuing court  
4 to the Department of Public Safety under Section 3(c),  
5 Article 55.02, Code of Criminal Procedure. Section  
6 3(c) is revised in relevant part as Article 55A.351(a)  
7 of this chapter, and the revised law is drafted  
8 accordingly.

9 Revised Law

10 Art. 55A.353. DISPOSITION OF EXPUNGED RECORDS. Except as  
11 provided by Articles 55A.354 and 55A.357, on receipt of an  
12 expunction order issued under Subchapter E or F, each official or  
13 agency or other governmental entity named in the order shall:

14 (1) as appropriate:

15 (A) return all records and files that are subject  
16 to the expunction order to the court; or

17 (B) in cases other than those described by  
18 Articles 55A.202 and 55A.203, if removal is impracticable,  
19 obliterate all portions of the record or file that identify the  
20 person who is the subject of the order and notify the court of the  
21 action; and

22 (2) delete from the named entity's public records all  
23 index references to the records and files that are subject to the  
24 expunction order. (Code Crim. Proc., Art. 55.02, Sec. 5(a).)

25 Source Law

26 Sec. 5. (a) Except as provided by Subsections  
27 (f) and (g), on receipt of the order, each official or  
28 agency or other governmental entity named in the order  
29 shall:

30 (1) return all records and files that are  
31 subject to the expunction order to the court or in  
32 cases other than those described by Section 1a, if  
33 removal is impracticable, obliterate all portions of  
34 the record or file that identify the person who is the  
35 subject of the order and notify the court of its  
36 action; and

37 (2) delete from its public records all  
38 index references to the records and files that are  
39 subject to the expunction order.

1 Revisor's Note

2 (1) Section 5(a), Article 55.02, Code of  
3 Criminal Procedure, refers to "the order." It is clear  
4 from the context that this is a reference to "an order  
5 of expunction issued under this article" from the  
6 first sentence of Section 3(a), revised as Article  
7 55A.301(b) of this chapter. The revised law adds a  
8 reference to Subchapters E and F for the reason stated  
9 in Revisor's Note (1) to Article 55A.301.

10 (2) Section 5(a), Article 55.02, Code of  
11 Criminal Procedure, refers to expunction orders for  
12 cases other than those described by Section 1a of that  
13 article. The provisions of Section 1a relating to the  
14 types of cases for which expunction orders may be  
15 entered are revised as Articles 55A.202 and 55A.203 of  
16 this chapter, and the revised law is drafted  
17 accordingly.

18 Revised Law

19 Art. 55A.354. DISPOSITION OF RECORDS EXPUNGED DUE TO  
20 MISTAKEN IDENTITY. On receipt of an order granting expunction to a  
21 person entitled to expunction under Article 55A.006, each official,  
22 agency, or other governmental entity named in the order:

23 (1) shall:

24 (A) obliterate all portions of the record or file  
25 that identify the person who is the subject of the order; and

26 (B) if applicable, substitute for all  
27 obliterated portions of the record or file any available  
28 information that identifies the person arrested; and

29 (2) may not return the record or file or delete index  
30 references to the record or file. (Code Crim. Proc., Art. 55.02,  
31 Sec. 5(f).)

32 Source Law

33 (f) On receipt of an order granting expunction  
34 to a person entitled to expunction under Article  
35 55.01(d), each official, agency, or other governmental

1 entity named in the order:

2 (1) shall:

3 (A) obliterate all portions of the  
4 record or file that identify the petitioner; and

5 (B) substitute for all obliterated  
6 portions of the record or file any available  
7 information that identifies the person arrested; and

8 (2) may not return the record or file or  
9 delete index references to the record or file.

10 Revisor's Note

11 (1) Section 5(f)(1)(A), Article 55.02, Code of  
12 Criminal Procedure, refers to a duty to obliterate all  
13 portions of a record or file that identify a  
14 "petitioner" who is entitled to an expunction order  
15 under Article 55.01(d). It is clear from the context  
16 of the entitlement to an expunction order under  
17 Article 55.01(d), revised as Article 55A.006 of this  
18 chapter, that the reference to "petitioner" is a  
19 reference to both an applicant in Section 2a, Article  
20 55.02, Code of Criminal Procedure, revised as Article  
21 55A.256 of this chapter, and to a person on whose  
22 behalf an ex parte petition is filed in Section 2(e),  
23 Article 55.02, Code of Criminal Procedure, revised as  
24 Article 55A.257 of this chapter. For the convenience  
25 of the reader, the revised law substitutes the phrase  
26 "person who is the subject of the order" for the  
27 reference to "petitioner," because the entitlement  
28 under Article 55.01(d) applies regardless of how the  
29 expunction order is obtained.

30 (2) Section 5(f)(1)(B), Article 55.02, Code of  
31 Criminal Procedure, requires a governmental entity  
32 named in an expunction order issued in the case of a  
33 person entitled to expunction under Article 55.01(d),  
34 revised as Article 55A.006 of this chapter, to  
35 obliterate portions of records identifying the person  
36 who is the subject of the petition and to "substitute  
37 for all obliterated portions of the record or file any  
38 available information that identifies the person

1 arrested." The revised law adds "if applicable" to the  
2 quoted language because Article 55.01(d) grants the  
3 right to an expunction to both an applicant for  
4 expunction who is arrested based on a clerical error  
5 and to an applicant whose identifying information is  
6 given by another person to an officer arresting that  
7 other person. Only the latter scenario would require  
8 the substitution of "information that identifies the  
9 person arrested."

10 Revised Law

11 Art. 55A.355. PROVIDING EXPUNGED RECORDS TO PERSON WHO IS  
12 SUBJECT OF EXPUNCTION. (a) The court may give the person who is the  
13 subject of an expunction order all records and files returned to the  
14 court pursuant to the order.

15 (b) This article does not apply to a person who is the  
16 subject of an expunction order on the basis of:

- 17 (1) an acquittal; or  
18 (2) an entitlement under Article 55A.006. (Code Crim.  
19 Proc., Art. 55.02, Sec. 5(b).)

20 Source Law

21 (b) Except in the case of a person who is the  
22 subject of an expunction order on the basis of an  
23 acquittal or an expunction order based on an  
24 entitlement under Article 55.01(d), the court may give  
25 the person who is the subject of the order all records  
26 and files returned to it pursuant to its order.

27 Revised Law

28 Art. 55A.356. INSPECTION AND DISPOSITION OF COURT'S RECORDS  
29 CONCERNING EXPUNCTION. (a) Except in the case of a person who is  
30 the subject of an expunction order based on an entitlement under  
31 Article 55A.006 and except as provided by Article 55A.357, if an  
32 expunction order is issued under Subchapter E or F, the court  
33 records concerning expunction proceedings are not open for  
34 inspection by any person except the person who is the subject of the  
35 order unless:

- 36 (1) the order permits retention of a record under

1 Article 55A.302 and the person is again arrested for or charged with  
2 an offense arising out of the transaction for which the person was  
3 arrested; or

4 (2) the court provides for the retention of records  
5 and files under Article 55A.302(a).

6 (b) The clerk of the court issuing the order shall  
7 obliterate all public references to the proceeding and maintain the  
8 files or other records in an area not open to inspection.

9 (c) Except in the case of a person who is the subject of an  
10 expunction order on the basis of an acquittal or an expunction order  
11 based on an entitlement under Article 55A.006 and except as  
12 provided by Article 55A.357, the clerk of the court shall destroy  
13 all the files or other records maintained under Subsection (b) not  
14 earlier than the 60th day after the date the order is issued or  
15 later than the first anniversary of that date, unless the records or  
16 files were released under Article 55A.355.

17 (d) Not later than the 30th day before the date on which the  
18 clerk destroys files or other records under Subsection (c), the  
19 clerk shall provide notice by mail, electronic mail, or facsimile  
20 transmission to the attorney representing the state in the  
21 expunction proceeding. If the attorney representing the state in  
22 the expunction proceeding objects to the destruction not later than  
23 the 20th day after receiving notice under this subsection, the  
24 clerk may not destroy the files or other records until the first  
25 anniversary of the date the expunction order is issued or the first  
26 business day after that date.

27 (e) The clerk shall certify to the court the destruction of  
28 files or other records under Subsection (c). (Code Crim. Proc.,  
29 Art. 55.02, Secs. 5(c), (d), (d-1), (e).)

30 Source Law

31 (c) Except in the case of a person who is the  
32 subject of an expunction order based on an entitlement  
33 under Article 55.01(d) and except as provided by  
34 Subsection (g), if an order of expunction is issued  
35 under this article, the court records concerning  
36 expunction proceedings are not open for inspection by  
37 anyone except the person who is the subject of the

1 order unless the order permits retention of a record  
2 under Section 4 of this article and the person is again  
3 arrested for or charged with an offense arising out of  
4 the transaction for which the person was arrested or  
5 unless the court provides for the retention of records  
6 and files under Section 4(a) of this article. The  
7 clerk of the court issuing the order shall obliterate  
8 all public references to the proceeding and maintain  
9 the files or other records in an area not open to  
10 inspection.

11 (d) Except in the case of a person who is the  
12 subject of an expunction order on the basis of an  
13 acquittal or an expunction order based on an  
14 entitlement under Article 55.01(d) and except as  
15 provided by Subsection (g), the clerk of the court  
16 shall destroy all the files or other records  
17 maintained under Subsection (c) not earlier than the  
18 60th day after the date the order of expunction is  
19 issued or later than the first anniversary of that date  
20 unless the records or files were released under  
21 Subsection (b).

22 (d-1) Not later than the 30th day before the  
23 date on which the clerk destroys files or other records  
24 under Subsection (d), the clerk shall provide notice  
25 by mail, electronic mail, or facsimile transmission to  
26 the attorney representing the state in the expunction  
27 proceeding. If the attorney representing the state in  
28 the expunction proceeding objects to the destruction  
29 not later than the 20th day after receiving notice  
30 under this subsection, the clerk may not destroy the  
31 files or other records until the first anniversary of  
32 the date the order of expunction is issued or the first  
33 business day after that date.

34 (e) The clerk shall certify to the court the  
35 destruction of files or other records under Subsection  
36 (d) of this section.

#### 37 Revisor's Note

38 Section 5(c), Article 55.02, Code of Criminal  
39 Procedure, restricts the inspection of court records  
40 concerning expunction proceedings if an expunction  
41 order is issued under "this article," meaning Article  
42 55.02, Code of Criminal Procedure. The revised law  
43 adds a reference to Subchapters E and F for the reason  
44 stated in Revisor's Note (1) to Article 55A.301.

#### 45 Revised Law

46 Art. 55A.357. RETENTION OF FINANCIAL TRANSACTION RECORDS.

47 (a) Notwithstanding Articles 55A.353, 55A.354, 55A.355, and  
48 55A.356 and in accordance with internal financial control  
49 procedures, an official, agency, court, or other entity may retain  
50 receipts, invoices, vouchers, or similar records of financial  
51 transactions that arose from an expunction proceeding or  
52 prosecution of the underlying criminal action.

1 (b) An official, agency, court, or other entity that retains  
2 records under this article shall obliterate all portions of the  
3 record or file that identify the person who is the subject of the  
4 expunction order. (Code Crim. Proc., Art. 55.02, Sec. 5(g).)

5 Source Law

6 (g) Notwithstanding any other provision in this  
7 section, an official, agency, court, or other entity  
8 may retain receipts, invoices, vouchers, or similar  
9 records of financial transactions that arose from the  
10 expunction proceeding or prosecution of the underlying  
11 criminal cause in accordance with internal financial  
12 control procedures. An official, agency, court, or  
13 other entity that retains records under this  
14 subsection shall obliterate all portions of the record  
15 or the file that identify the person who is the subject  
16 of the expunction order.

17 Revisor's Note

18 (1) Section 5(g), Article 55.02, Code of  
19 Criminal Procedure, refers to the "other provision[s]"  
20 in that section. The other subsections of Section 5  
21 are revised as Articles 55A.353, 55A.354, 55A.355, and  
22 55A.356 of this chapter, and the revised law is drafted  
23 accordingly.

24 (2) Section 5(g), Article 55.02, Code of  
25 Criminal Procedure, refers to a "criminal cause." The  
26 revised law substitutes "action" for "cause" because  
27 in this context the terms are synonymous and the former  
28 is more consistent with modern usage.

29 SUBCHAPTER I. EFFECT OF EXPUNCTION ORDER

30 Revised Law

31 Art. 55A.401. EFFECT OF FINAL EXPUNCTION ORDER. When an  
32 expunction order issued under Subchapter E or F is final:

33 (1) the release, maintenance, dissemination, or use of  
34 the expunged records and files for any purpose is prohibited;

35 (2) except as provided by Subdivision (3), the person  
36 arrested may deny the occurrence of the arrest and the existence of  
37 the expunction order; and

38 (3) the person arrested or any other person, when  
39 questioned under oath in a criminal proceeding about an arrest for



1 which the records have been expunged, may state only that the matter  
2 in question has been expunged. (Code Crim. Proc., Art. 55.03.)

3 Source Law

4 Art. 55.03. EFFECT OF EXPUNCTION. When the  
5 order of expunction is final:

6 (1) the release, maintenance,  
7 dissemination, or use of the expunged records and  
8 files for any purpose is prohibited;

9 (2) except as provided in Subdivision (3)  
10 of this article, the person arrested may deny the  
11 occurrence of the arrest and the existence of the  
12 expunction order; and

13 (3) the person arrested or any other  
14 person, when questioned under oath in a criminal  
15 proceeding about an arrest for which the records have  
16 been expunged, may state only that the matter in  
17 question has been expunged.

18 Revisor's Note

19 Article 55.03, Code of Criminal Procedure, refers  
20 to "the order of expunction." It is clear from the  
21 context that this is a reference to an expunction order  
22 in Section 3(a), Article 55.02, Code of Criminal  
23 Procedure, revised as Article 55A.301(b) of this  
24 chapter, and in Section 5(c), Article 55.02, Code of  
25 Criminal Procedure, revised in Article 55A.356 of this  
26 chapter. The revised law adds a reference to  
27 Subchapters E and F for the reason stated in Revisor's  
28 Note (1) to Article 55A.301.

29 Revised Law

30 Art. 55A.402. OFFENSE FOR VIOLATION OF EXPUNCTION ORDER.

31 (a) A person commits an offense if the person:

32 (1) learns of an arrest while an officer or employee of  
33 the state or of any agency or other entity of the state or any  
34 political subdivision of the state;

35 (2) knows of an order expunging the records and files  
36 relating to that arrest; and

37 (3) knowingly releases, disseminates, or otherwise  
38 uses the records or files.

39 (b) A person commits an offense if the person knowingly  
40 fails to return or to obliterate identifying portions of a record or

1 file ordered expunged under this chapter.

2 (c) An offense under this article is a Class B misdemeanor.  
3 (Code Crim. Proc., Art. 55.04.)

4 Source Law

5 Art. 55.04. VIOLATION OF EXPUNCTION ORDER.

6 Sec. 1. A person who acquires knowledge of an  
7 arrest while an officer or employee of the state or of  
8 any agency or other entity of the state or any  
9 political subdivision of the state and who knows of an  
10 order expunging the records and files relating to that  
11 arrest commits an offense if he knowingly releases,  
12 disseminates, or otherwise uses the records or files.

13 Sec. 2. A person who knowingly fails to return  
14 or to obliterate identifying portions of a record or  
15 file ordered expunged under this chapter commits an  
16 offense.

17 Sec. 3. An offense under this article is a Class  
18 B misdemeanor.

19 Revisor's Note

20 Section 1, Article 55.04, Code of Criminal  
21 Procedure, refers to a person who "acquires knowledge"  
22 of an arrest. The revised law substitutes "learns" for  
23 "acquires knowledge" because in this context the terms  
24 are synonymous and the former is more consistent with  
25 modern usage.

26 SUBCHAPTER J. NOTICE OF EXPUNCTION LAW

27 Revised Law

28 Art. 55A.451. NOTICE OF EXPUNCTION LAW TO PERSONS RELEASED  
29 FOLLOWING ARREST. On release or discharge of an arrested person,  
30 the person responsible for the release or discharge shall give the  
31 released or discharged person a written explanation of that  
32 person's rights under this chapter and a copy of the provisions of  
33 this chapter. (Code Crim. Proc., Art. 55.05.)

34 Source Law

35 Art. 55.05. NOTICE OF RIGHT TO EXPUNCTION. On  
36 release or discharge of an arrested person, the person  
37 responsible for the release or discharge shall give  
38 him a written explanation of his rights under this  
39 chapter and a copy of the provisions of this chapter.