

By: Farias, King of Taylor, Martinez Fischer, H.B. No. 1048
Miller of Fort Bend, Coleman

Substitute the following for H.B. No. 1048:

By: King of Taylor C.S.H.B. No. 1048

A BILL TO BE ENTITLED

AN ACT

relating to the redesignation of veterans court programs as veterans treatment court programs, the administration of those programs, the expunction of arrest records and files for certain participants who successfully complete a program, and the issuance of orders of nondisclosure for participants convicted of a misdemeanor; changing a fee.

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

SECTION 1. Article 55.01(a), Code of Criminal Procedure, is amended to read as follows:

(a) A person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged if:

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

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

(B) convicted and subsequently:

(i) pardoned for a reason other than that described by Subparagraph (ii); or

(ii) pardoned or otherwise granted relief on the basis of actual innocence with respect to that offense, if the applicable pardon or court order clearly indicates on its face

1 that the pardon or order was granted or rendered on the basis of the
2 person's actual innocence; or

3 (2) the person has been released and the charge, if
4 any, has not resulted in a final conviction and is no longer pending
5 and there was no court-ordered community supervision under Article
6 42.12 for the offense, unless the offense is a Class C misdemeanor,
7 provided that:

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

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

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

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

27 (c) at least three years have elapsed

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

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

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

12 (a) the person was arrested for a
13 Class B or Class C misdemeanor and subsequently completed a
14 veterans treatment court program under Chapter 124, Government
15 Code, or former law;

16 (b) the person completed a pretrial
17 intervention program authorized under Section 76.011, Government
18 Code, or, if the person was arrested for an offense punishable as a
19 Class A misdemeanor or any higher category of offense, a veterans
20 treatment court program under Chapter 124, Government Code, or
21 former law;

22 (c) [because] the presentment had
23 been made because of mistake, false information, or other similar
24 reason indicating absence of probable cause at the time of the
25 dismissal to believe the person committed the offense; or

26 (d) [~~or because~~] the indictment or
27 information was void; or

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

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

(a-1) A trial court dismissing a case of a person arrested for a Class B or Class C misdemeanor, following the person's successful completion of a veterans treatment court program created under Chapter 124, Government Code, or former law, if the trial court is a district court, or a district court in the county in which the trial court is located shall enter an order of expunction for a person entitled to expunction under Article 55.01(a)(2)(A)(ii)(a) not later than the 30th day after the date the court dismisses the case or receives the information regarding that dismissal, as applicable.

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

(a) A person who is entitled to expunction of records and files under Article 55.01(a)(1)(B)(i) or under Article 55.01(a)(2), other than Article 55.01(a)(2)(A)(ii)(a), or a person who is eligible for expunction of records and files under Article 55.01(b) may file an ex parte petition for expunction in a district court for the county in which:

(1) the petitioner was arrested; or

(2) the offense was alleged to have occurred.

SECTION 4. Section 54.976(a), Government Code, is amended

1 to read as follows:

2 (a) A judge may refer to a magistrate any criminal case or
3 matter relating to a criminal case for proceedings involving:

4 (1) a negotiated plea of guilty or no contest and
5 sentencing;

6 (2) a pretrial motion;

7 (3) an examining trial;

8 (4) a writ of habeas corpus;

9 (5) a bond forfeiture suit;

10 (6) issuance of search warrants;

11 (7) setting, setting conditions, modifying, revoking,
12 and surrendering of bonds, including surety bonds;

13 (8) arraignment of defendants;

14 (9) a motion to increase or decrease a bond;

15 (10) a motion to revoke community supervision or to
16 proceed to an adjudication;

17 (11) an issue of competency or a civil commitment
18 under Chapter 46, 46B, or 46C, Code of Criminal Procedure, with or
19 without a jury;

20 (12) a motion to modify community supervision;

21 (13) specialty court proceedings, including drug
22 court proceedings, veterans treatment ~~[veteran's]~~ court
23 proceedings, and driving while intoxicated court proceedings;

24 (14) an expunction or a petition for nondisclosure;

25 (15) an occupational driver's license;

26 (16) a waiver of extradition;

27 (17) the issuance of subpoenas and orders requiring

the production of medical records, including records relating to mental health or substance abuse treatment; and

(18) any other matter the judge considers necessary and proper.

SECTION 5. Section 103.0271, Government Code, is amended to read as follows:

Sec. 103.0271. ADDITIONAL MISCELLANEOUS FEES AND COSTS: GOVERNMENT CODE. Fees and costs shall be paid or collected under the Government Code as follows:

(1) a program fee for a drug court program (Sec. 123.004, Government Code) . . . not to exceed \$1,000;

(2) an alcohol or controlled substance testing, counseling, and treatment fee (Sec. 123.004, Government Code) . . . the amount necessary to cover the costs of testing, counseling, and treatment;

(3) a reasonable program fee for a veterans treatment court program (Sec. 124.005, Government Code) . . . not to exceed \$500 [~~\$1,000~~]; and

(4) a testing, counseling, and treatment fee for testing, counseling, or treatment performed or provided under a veterans treatment court program (Sec. 124.005, Government Code) . . . the amount necessary to cover the costs of testing, counseling, or treatment.

SECTION 6. The heading to Chapter 124, Government Code, is amended to read as follows:

CHAPTER 124. VETERANS TREATMENT COURT PROGRAM

SECTION 7. Section 124.001, Government Code, is amended to

1 read as follows:

2 Sec. 124.001. VETERANS TREATMENT COURT PROGRAM DEFINED;
3 PROCEDURES FOR CERTAIN DEFENDANTS. (a) In this chapter, "veterans
4 treatment court program" means a program that has the following
5 essential characteristics:

6 (1) the integration of services in the processing of
7 cases in the judicial system;

8 (2) the use of a nonadversarial approach involving
9 prosecutors and defense attorneys to promote public safety and to
10 protect the due process rights of program participants;

11 (3) early identification and prompt placement of
12 eligible participants in the program;

13 (4) access to a continuum of alcohol, controlled
14 substance, mental health, and other related treatment and
15 rehabilitative services;

16 (5) careful monitoring of treatment and services
17 provided to program participants;

18 (6) a coordinated strategy to govern program responses
19 to participants' compliance;

20 (7) ongoing judicial interaction with program
21 participants;

22 (8) monitoring and evaluation of program goals and
23 effectiveness;

24 (9) continuing interdisciplinary education to promote
25 effective program planning, implementation, and operations; and

26 (10) development of partnerships with public agencies
27 and community organizations, including the United States

Department of Veterans Affairs.

(b) If a defendant who was arrested for or charged with, but not convicted of or placed on deferred adjudication community supervision for, an offense successfully completes a veterans treatment court program ~~[as authorized under Section 76.011]~~, after notice to the attorney representing the state and a hearing in the veterans treatment court at which that court determines that a dismissal is in the best interest of justice, the veterans treatment court shall provide its findings with respect to the dismissal to the court in which the criminal case is pending and shall include, for a defendant entitled to expunction, all of the information required for a petition under Section 2(b), Article 55.02, Code of Criminal Procedure. If the veterans treatment court determines that a dismissal is in the best interest of justice for a program participant, the court in which the criminal case is pending shall dismiss the case ~~[criminal action]~~ against the participant. For a participant who is entitled to an automatic order of expunction under Section 1a(a-1), Article 55.02, Code of Criminal Procedure, the court in which the criminal case is pending shall:

(1) enter the order on behalf of the participant, if that court is a district court; or

(2) if that court is not a district court, forward the appropriate dismissal and expunction information to a district court with jurisdiction to enter the order on behalf of the participant ~~[defendant]~~.

(c) Regardless of whether the defendant was convicted of the

1 offense for which the defendant entered the veterans treatment
2 court program or whether the applicable court with jurisdiction
3 over the criminal case deferred further proceedings without
4 entering an adjudication of guilt, if a defendant successfully
5 completes a veterans treatment court program and the case was not
6 dismissed under Subsection (b), after notice to the state and a
7 hearing on whether the defendant is otherwise entitled to the
8 petition and whether issuance of the order is in the best interest
9 of justice, the court shall enter an order of nondisclosure under
10 Section 411.081 as if the defendant had received a discharge and
11 dismissal under Section 5(c), Article 42.12, Code of Criminal
12 Procedure, with respect to all records and files related to the
13 defendant's arrest for the offense for which the defendant entered
14 the program if the defendant entered the program based on an offense
15 punishable as a misdemeanor and:

16 (1) has not been previously convicted of an offense
17 listed in Section 3g, Article 42.12, Code of Criminal Procedure, or
18 a sexually violent offense, as defined by Article 62.001, Code of
19 Criminal Procedure; and

20 (2) is not convicted for any felony offense between
21 the date on which the defendant successfully completed the program
22 and the second anniversary of that date.

23 (d) Notwithstanding Subsection (c), a defendant is not
24 entitled to petition the court for an order of nondisclosure
25 following successful completion of a veterans treatment court
26 program if the defendant's entry into the program arose as the
27 result of a conviction for an offense involving the operation of a

1 motor vehicle while intoxicated and it was shown on the trial of the
2 offense that the defendant's operation of a motor vehicle while
3 intoxicated caused bodily injury to another. In this subsection,
4 "bodily injury" has the meaning assigned by Section 1.07, Penal
5 Code.

6 SECTION 8. Section 124.002, Government Code, is amended to
7 read as follows:

8 Sec. 124.002. AUTHORITY TO ESTABLISH PROGRAM; ELIGIBILITY.

9 (a) The commissioners court of a county may establish a veterans
10 treatment court program for persons arrested for, ~~or~~ charged
11 with, convicted of, or placed on deferred adjudication community
12 supervision for any misdemeanor or felony offense. A defendant is
13 eligible to participate in a veterans treatment court program
14 established under this chapter only if the attorney representing
15 the state consents to the defendant's participation in the program
16 and if the court in which the criminal case is pending or in which
17 the defendant was convicted or placed on deferred adjudication
18 community supervision, as applicable, finds that:

19 (1) the defendant:

20 (A) ~~[(1)]~~ is a veteran or current member of the
21 United States armed forces, including a member of the reserves,
22 national guard, or state guard; and

23 (B) ~~[(2)]~~ suffers from a brain injury, mental
24 illness, or mental disorder, including post-traumatic stress
25 disorder, or was a victim of military sexual trauma if the injury,
26 illness, disorder, or trauma ~~[that]~~:

27 (i) occurred during or ~~[(A)]~~ resulted from

the defendant's military service [~~in a combat zone or other similar hazardous duty area~~]; and

(ii) [~~(B) materially~~] affected the defendant's criminal conduct at issue in the case; or

(2) considering the circumstances of the defendant's conduct, personal and social background, and criminal history, the defendant's participation in a veterans treatment court program is likely to achieve the objective of ensuring public safety through rehabilitation of the veteran in the manner provided by Section 1.02(1), Penal Code.

(b) The court in which the criminal case is pending shall allow an eligible defendant to choose whether to proceed through the veterans treatment court program or otherwise through the criminal justice system.

(c) Proof of matters described by Subsection (a) may be submitted to the applicable criminal court [~~in which the criminal case is pending~~] in any form the court determines to be appropriate, including military service and medical records, previous determinations of a disability by a veteran's organization or by the United States Department of Veterans Affairs, testimony or affidavits of other veterans or service members, and prior determinations of eligibility for benefits by any state or county veterans office. The court's findings must accompany any docketed case.

(d) In this section, "military sexual trauma" means any sexual assault or sexual harassment that occurs while the victim is a member of the United States armed forces performing the person's

1 regular duties.

2 SECTION 9. The heading to Section 124.003, Government Code,
3 is amended to read as follows:

4 Sec. 124.003. DUTIES OF VETERANS TREATMENT COURT PROGRAM.

5 SECTION 10. Section 124.003, Government Code, is amended by
6 amending Subsections (a) and (b) and adding Subsection (b-1) to
7 read as follows:

8 (a) A veterans treatment court program established under
9 this chapter must:

10 (1) if there has not yet been a disposition in the
11 criminal case, ensure that a person eligible for the program is
12 provided legal counsel before volunteering to proceed through the
13 program and while participating in the program;

14 (2) allow a participant arrested for or charged with
15 an offense to withdraw from the program at any time before a trial
16 on the merits has been initiated;

17 (3) provide a participant with a court-ordered
18 individualized treatment plan indicating the services that will be
19 provided to the participant; and

20 (4) ensure that the jurisdiction of the veterans
21 treatment court continues for a period of not less than six months
22 but does not continue beyond the period of community supervision
23 for the offense charged.

24 (b) A veterans treatment court program established under
25 this chapter shall make, establish, and publish local procedures to
26 ensure maximum participation of eligible defendants in the county
27 or counties in which those defendants reside.

1 (b-1) A veterans treatment court program may allow a
2 participant to comply with the participant's court-ordered
3 individualized treatment plan or to fulfill certain other court
4 obligations through the use of videoconferencing software or other
5 Internet-based communications.

6 SECTION 11. Section 124.004, Government Code, is amended to
7 read as follows:

8 Sec. 124.004. ESTABLISHMENT OF REGIONAL PROGRAM. (a) The
9 commissioners courts of two or more counties may elect to establish
10 a regional veterans treatment court program under this chapter for
11 the participating counties.

12 (b) For purposes of this chapter, each county that elects to
13 establish a regional veterans treatment court program under this
14 section is considered to have established the program and is
15 entitled to retain fees under Article 102.0178, Code of Criminal
16 Procedure, in the same manner as if the county had established a
17 veterans treatment court program without participating in a
18 regional program.

19 SECTION 12. Section 124.005(a), Government Code, is amended
20 to read as follows:

21 (a) A veterans treatment court program established under
22 this chapter may collect from a participant in the program:

23 (1) a reasonable program fee not to exceed \$500
24 [~~\$1,000~~]; and

25 (2) a testing, counseling, and treatment fee in an
26 amount necessary to cover the costs of any testing, counseling, or
27 treatment performed or provided under the program.

SECTION 13. Chapter 124, Government Code, is amended by adding Section 124.006 to read as follows:

Sec. 124.006. COURTESY SUPERVISION. (a) A veterans treatment court program that accepts placement of a defendant may transfer responsibility for supervising the defendant's participation in the program to another veterans treatment court program that is located in the county where the defendant works or resides. The defendant's supervision may be transferred under this section only with the consent of both veterans treatment court programs and the defendant.

(b) A defendant that consents to the transfer of the defendant's supervision must agree to abide by all rules, requirements, and instructions of the veterans treatment court program that accepts the transfer.

(c) If a defendant whose supervision is transferred under this section does not successfully complete the program, the veterans treatment court program supervising the defendant shall return the responsibility for the defendant's supervision to the veterans treatment court program that initiated the transfer.

(d) If a defendant is charged with an offense in a county that does not operate a veterans treatment court program, the court in which the criminal case is pending may place the defendant in a veterans treatment court program located in the county where the defendant works or resides, provided that a program is operated in that county and the defendant agrees to the placement. A defendant placed in a veterans treatment court program in accordance with this subsection must agree to abide by all rules, requirements, and

1 instructions of the program.

2 SECTION 14. Section 772.0061(a)(2), Government Code, as
3 amended by Chapters 747 (S.B. 462) and 1167 (S.B. 484), Acts of the
4 83rd Legislature, Regular Session, 2013, is reenacted and amended
5 to read as follows:

6 (2) "Specialty court" means:

7 (A) a prostitution prevention program
8 established under Chapter 169A, Health and Safety Code;

9 (B) a family drug court program established under
10 Chapter 122 or former law;

11 (C) [~~(B)~~] a drug court program established under
12 Chapter 123 or former law;

13 (D) [~~(C)~~] a veterans treatment court program
14 established under Chapter 124 or former law; and

15 (E) [~~(D)~~] a mental health court program
16 established under Chapter 125 or former law.

17 SECTION 15. (a) The changes in law made by this Act in
18 amending Chapter 55, Code of Criminal Procedure, and in amending
19 Section 124.001(b), Government Code, apply to the expunction of
20 arrest records and files for an arrested person who successfully
21 completes a veterans treatment court program under Chapter 124,
22 Government Code, or former law, before, on, or after the effective
23 date of this Act, regardless of when the underlying arrest
24 occurred.

25 (b) For a person who is arrested for a Class B or Class C
26 misdemeanor and who is entitled to expunction under Article
27 55.01(a)(2)(A)(ii)(a), Code of Criminal Procedure, as added by this

1 Act, based on a successful completion of a veterans treatment court
2 program under Chapter 124, Government Code, or former law, before
3 the effective date of this Act, notwithstanding the 30-day time
4 limit provided for the court to enter an automatic order of
5 expunction under Section 1a(a-1), Article 55.02, Code of Criminal
6 Procedure, as added by this Act, the court shall enter an order of
7 expunction for the person as soon as practicable after the court
8 receives written notice from any party to the case about the
9 person's entitlement to the expunction.

10 (c) The change in law made by this Act by adding Sections
11 124.001(c) and (d), Government Code, and amending Section 124.002,
12 Government Code, applies to a person who, on or after the effective
13 date of this Act, enters a veterans treatment court program under
14 Chapter 124, Government Code, regardless of whether the person
15 committed the offense for which the person enters the program
16 before, on, or after the effective date of this Act.

17 (d) The change in law made by this Act in adding Section
18 124.006, Government Code, applies to a person who, on or after the
19 effective date of this Act, is under the supervision of a veterans
20 treatment court program.

21 SECTION 16. To the extent of any conflict, this Act prevails
22 over another Act of the 84th Legislature, Regular Session, 2015,
23 relating to nonsubstantive additions to and corrections in enacted
24 codes.

25 SECTION 17. This Act takes effect September 1, 2015.