

By: Wu

H.B. No. 519

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the expunction of arrest records and files when a grand
3 jury fails to find that probable cause exists to believe the alleged
4 offense was committed.

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

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

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

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

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

16 (B) convicted and subsequently:

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

19 (ii) pardoned or otherwise granted relief
20 on the basis of actual innocence with respect to that offense, if
21 the applicable pardon or court order clearly indicates on its face
22 that the pardon or order was granted or rendered on the basis of the
23 person's actual innocence; or

24 (C) convicted of an offense committed before

1 September 1, 2021, under Section 46.02(a), Penal Code, as that
2 section existed before that date; 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 Chapter
6 42A 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 (e) the presentment did not occur
10 solely because the grand jury failed to find that probable cause
11 exists to believe the person committed the offense; or

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

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

18 (b) the person completed a mental
19 health court program created under Chapter 125, Government Code, or
20 former law, subject to Subsection (a-4);

21 (c) the person completed a pretrial
22 intervention program authorized under Section 76.011, Government
23 Code, other than a veterans treatment court program created under
24 Chapter 124, Government Code, or former law, or a mental health
25 court program created under Chapter 125, Government Code, or former
26 law;

27 (d) the presentment had been made

1 because of mistake, false information, or other similar reason
2 indicating absence of probable cause at the time of the dismissal to
3 believe the person committed the offense; or

4 (e) the indictment or information was
5 void; or

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

9 SECTION 2. The change in law made by this Act applies to the
10 expunction of arrest records and files for any criminal offense
11 that occurred before, on, or after the effective date of this Act.

12 SECTION 3. This Act takes effect September 1, 2023.