

By: Jones of Harris

H.B. No. 3686

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the automatic expunction of arrest records and files
3 after certain controlled substance offense charges are dismissed.

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

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

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

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

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

15 (B) convicted and subsequently:

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

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

23 (C) convicted of an offense committed before
24 September 1, 2021, under Section 46.02(a), Penal Code, as that

1 section existed before that date; or

2 (2) the person has been released and the charge, if
3 any, has not resulted in a final conviction and is no longer pending
4 and there was no court-ordered community supervision under Chapter
5 42A for the offense, unless the offense is a Class C misdemeanor,
6 provided that:

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

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

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

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

26 (c) at least three years have elapsed
27 from the date of arrest if the arrest for which the expunction was

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

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

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

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

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

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

23 (d) the person is charged solely with
24 an offense under Subchapter D, Chapter 481, Health and Safety Code,
25 involving the manufacture, delivery, or possession of a controlled
26 substance and a laboratory analysis of the suspected controlled
27 substance finds no presence of a controlled substance;

1 (e) the presentment had been made
2 because of mistake, false information, or other similar reason
3 indicating absence of probable cause at the time of the dismissal to
4 believe the person committed the offense; or

5 (f) [~~(e)~~] the indictment or
6 information was void; or

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

10 SECTION 2. Section 1a, Article 55.02, Code of Criminal
11 Procedure, is amended by adding Subsection (a-3) to read as
12 follows:

13 (a-3) A trial court dismissing a case following a laboratory
14 analysis of a suspected controlled substance that finds no presence
15 of a controlled substance, if the trial court is a district court,
16 or a district court in the county in which the trial court is
17 located shall enter an order of expunction for a person entitled to
18 expunction under Article 55.01(a)(2)(A)(ii)(d) not later than the
19 30th day after the date the court dismisses the case or receives the
20 information regarding that dismissal, as applicable.
21 Notwithstanding any other law, a court that enters an order for
22 expunction under this subsection may not charge any fee or assess
23 any cost for the expunction.

24 SECTION 3. Article 102.006(b-1), Code of Criminal
25 Procedure, is amended to read as follows:

26 (b-1) The fees under Subsection (a) shall be waived if the
27 petitioner is entitled to expunction:

1 (1) under Article 55.01(a)(2)(A)(ii)(a) after
2 successful completion of a veterans treatment court program created
3 under Chapter 124, Government Code, or former law; ~~[or]~~

4 (2) under Article 55.01(a)(2)(A)(ii)(b) after
5 successful completion of a mental health court program created
6 under Chapter 125, Government Code, or former law; or

7 (3) under Article 55.01(a)(2)(A)(ii)(d).

8 SECTION 4. (a) This Act applies only to the expunction of
9 arrest records related to:

10 (1) a charge for an offense that was dismissed on or
11 after the effective date of this Act; or

12 (2) an arrest made on or after the effective date of
13 this Act.

14 (b) Expunction for a dismissal or arrest that occurred
15 before the effective date of this Act is governed by the law in
16 effect at that time, and the former law is continued in effect for
17 that purpose.

18 (c) The change in law made by this Act to Article 102.006,
19 Code of Criminal Procedure, applies to the fees charged or costs
20 assessed for an expunction order entered on or after the effective
21 date of this Act.

22 (d) For a person who is entitled to expunction under Article
23 55.01(a)(2)(A)(ii)(d), Code of Criminal Procedure, as amended by
24 this Act, before the effective date of this Act, notwithstanding
25 the 30-day time limit provided for the court to enter an automatic
26 order of expunction under Section 1a(a-3), Article 55.02, Code of
27 Criminal Procedure, as added by this Act, the court shall enter an

1 order of expunction for the person as soon as practicable after the
2 court receives written notice from any party to the case about the
3 person's entitlement to the expunction.

4 SECTION 5. This Act takes effect September 1, 2023.