

1-1 By: Jones of Harris (Senate Sponsor - Huffman) H.B. No. 3686  
1-2 (In the Senate - Received from the House May 15, 2023;  
1-3 May 18, 2023, read first time and referred to Committee on Criminal  
1-4 Justice; May 19, 2023, reported favorably by the following vote:  
1-5 Yeas 7, Nays 0; May 19, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	<u>Whitmire</u>	X		
1-9	<u>Flores</u>	X		
1-10	<u>Bettencourt</u>	X		
1-11	<u>Hinojosa</u>	X		
1-12	<u>Huffman</u>	X		
1-13	<u>King</u>	X		
1-14	<u>Miles</u>	X		

1-15 A BILL TO BE ENTITLED  
1-16 AN ACT

1-17 relating to the automatic expunction of arrest records and files  
1-18 after certain controlled substance offense charges are dismissed.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Article 55.01(a), Code of Criminal Procedure, is  
1-21 amended to read as follows:

1-22 (a) A person who has been placed under a custodial or  
1-23 noncustodial arrest for commission of either a felony or  
1-24 misdemeanor is entitled to have all records and files relating to  
1-25 the arrest expunged if:

1-26 (1) the person is tried for the offense for which the  
1-27 person was arrested and is:

1-28 (A) acquitted by the trial court, except as  
1-29 provided by Subsection (c);

1-30 (B) convicted and subsequently:

1-31 (i) pardoned for a reason other than that  
1-32 described by Subparagraph (ii); or

1-33 (ii) pardoned or otherwise granted relief  
1-34 on the basis of actual innocence with respect to that offense, if  
1-35 the applicable pardon or court order clearly indicates on its face  
1-36 that the pardon or order was granted or rendered on the basis of the  
1-37 person's actual innocence; or

1-38 (C) convicted of an offense committed before  
1-39 September 1, 2021, under Section 46.02(a), Penal Code, as that  
1-40 section existed before that date; or

1-41 (2) the person has been released and the charge, if  
1-42 any, has not resulted in a final conviction and is no longer pending  
1-43 and there was no court-ordered community supervision under Chapter  
1-44 42A for the offense, unless the offense is a Class C misdemeanor,  
1-45 provided that:

1-46 (A) regardless of whether any statute of  
1-47 limitations exists for the offense and whether any limitations  
1-48 period for the offense has expired, an indictment or information  
1-49 charging the person with the commission of a misdemeanor offense  
1-50 based on the person's arrest or charging the person with the  
1-51 commission of any felony offense arising out of the same  
1-52 transaction for which the person was arrested:

1-53 (i) has not been presented against the  
1-54 person at any time following the arrest, and:

1-55 (a) at least 180 days have elapsed  
1-56 from the date of arrest if the arrest for which the expunction was  
1-57 sought was for an offense punishable as a Class C misdemeanor and if  
1-58 there was no felony charge arising out of the same transaction for  
1-59 which the person was arrested;

1-60 (b) at least one year has elapsed from  
1-61 the date of arrest if the arrest for which the expunction was sought

2-1 was for an offense punishable as a Class B or A misdemeanor and if  
 2-2 there was no felony charge arising out of the same transaction for  
 2-3 which the person was arrested;  
 2-4 (c) at least three years have elapsed  
 2-5 from the date of arrest if the arrest for which the expunction was  
 2-6 sought was for an offense punishable as a felony or if there was a  
 2-7 felony charge arising out of the same transaction for which the  
 2-8 person was arrested; or  
 2-9 (d) the attorney representing the  
 2-10 state certifies that the applicable arrest records and files are  
 2-11 not needed for use in any criminal investigation or prosecution,  
 2-12 including an investigation or prosecution of another person; or  
 2-13 (ii) if presented at any time following the  
 2-14 arrest, was dismissed or quashed, and the court finds that the  
 2-15 indictment or information was dismissed or quashed because:  
 2-16 (a) the person completed a veterans  
 2-17 treatment court program created under Chapter 124, Government Code,  
 2-18 or former law, subject to Subsection (a-3);  
 2-19 (b) the person completed a mental  
 2-20 health court program created under Chapter 125, Government Code, or  
 2-21 former law, subject to Subsection (a-4);  
 2-22 (c) the person completed a pretrial  
 2-23 intervention program authorized under Section 76.011, Government  
 2-24 Code, other than a veterans treatment court program created under  
 2-25 Chapter 124, Government Code, or former law, or a mental health  
 2-26 court program created under Chapter 125, Government Code, or former  
 2-27 law;  
 2-28 (d) the person is charged solely with  
 2-29 an offense under Subchapter D, Chapter 481, Health and Safety Code,  
 2-30 involving the manufacture, delivery, or possession of a controlled  
 2-31 substance and a laboratory analysis of the suspected controlled  
 2-32 substance finds no presence of a controlled substance;  
 2-33 (e) the presentment had been made  
 2-34 because of mistake, false information, or other similar reason  
 2-35 indicating absence of probable cause at the time of the dismissal to  
 2-36 believe the person committed the offense; or  
 2-37 (f) [~~e~~] the indictment or  
 2-38 information was void; or  
 2-39 (B) prosecution of the person for the offense for  
 2-40 which the person was arrested is no longer possible because the  
 2-41 limitations period has expired.  
 2-42 SECTION 2. Section 1a, Article 55.02, Code of Criminal  
 2-43 Procedure, is amended by adding Subsection (a-3) to read as  
 2-44 follows:  
 2-45 (a-3) A trial court dismissing a case following a laboratory  
 2-46 analysis of a suspected controlled substance that finds no presence  
 2-47 of a controlled substance, if the trial court is a district court,  
 2-48 or a district court in the county in which the trial court is  
 2-49 located shall enter an order of expunction for a person entitled to  
 2-50 expunction under Article 55.01(a)(2)(A)(ii)(d) not later than the  
 2-51 30th day after the date the court dismisses the case or receives the  
 2-52 information regarding that dismissal, as applicable.  
 2-53 Notwithstanding any other law, a court that enters an order for  
 2-54 expunction under this subsection may not charge any fee or assess  
 2-55 any cost for the expunction.  
 2-56 SECTION 3. Article 102.006(b-1), Code of Criminal  
 2-57 Procedure, is amended to read as follows:  
 2-58 (b-1) The fees under Subsection (a) shall be waived if the  
 2-59 petitioner is entitled to expunction:  
 2-60 (1) under Article 55.01(a)(2)(A)(ii)(a) after  
 2-61 successful completion of a veterans treatment court program created  
 2-62 under Chapter 124, Government Code, or former law; [~~or~~]  
 2-63 (2) under Article 55.01(a)(2)(A)(ii)(b) after  
 2-64 successful completion of a mental health court program created  
 2-65 under Chapter 125, Government Code, or former law; or  
 2-66 (3) under Article 55.01(a)(2)(A)(ii)(d).  
 2-67 SECTION 4. (a) This Act applies only to the expunction of  
 2-68 arrest records related to:  
 2-69 (1) a charge for an offense that was dismissed on or

3-1 after the effective date of this Act; or  
3-2 (2) an arrest made on or after the effective date of  
3-3 this Act.

3-4 (b) Expunction for a dismissal or arrest that occurred  
3-5 before the effective date of this Act is governed by the law in  
3-6 effect at that time, and the former law is continued in effect for  
3-7 that purpose.

3-8 (c) The change in law made by this Act to Article 102.006,  
3-9 Code of Criminal Procedure, applies to the fees charged or costs  
3-10 assessed for an expunction order entered on or after the effective  
3-11 date of this Act.

3-12 (d) For a person who is entitled to expunction under Article  
3-13 55.01(a)(2)(A)(ii)(d), Code of Criminal Procedure, as amended by  
3-14 this Act, before the effective date of this Act, notwithstanding  
3-15 the 30-day time limit provided for the court to enter an automatic  
3-16 order of expunction under Section 1a(a-3), Article 55.02, Code of  
3-17 Criminal Procedure, as added by this Act, the court shall enter an  
3-18 order of expunction for the person as soon as practicable after the  
3-19 court receives written notice from any party to the case about the  
3-20 person's entitlement to the expunction.

3-21 SECTION 5. This Act takes effect September 1, 2023.

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