

By: Turner of Harris

H.B. No. 4135

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the right to an expunction of records and files relating  
3 to a person's arrest.

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) [~~of this section~~]; or

15 (B) convicted and subsequently pardoned; [~~or~~]

16 (2) prosecution of the person for the offense for  
17 which the person was arrested is no longer possible because:

18 (A) the limitations period has expired; or

19 (B) double jeopardy has attached; or

20 (3) each of the following conditions exist:

21 (A) an indictment or information charging the  
22 person with commission of a felony or misdemeanor has not been  
23 presented against the person for an offense arising out of the  
24 transaction for which the person was arrested or, if an indictment

1 or information charging the person with commission of a felony or  
2 misdemeanor was presented, the indictment or information has been  
3 dismissed or quashed [~~, and~~

4 [~~(i) the limitations period expired before~~  
5 ~~the date on which a petition for expunction was filed under Article~~  
6 ~~55.02, or~~

7 [~~(ii) the court finds that the indictment~~  
8 ~~or information was dismissed or quashed because the presentment had~~  
9 ~~been made because of mistake, false information, or other similar~~  
10 ~~reason indicating absence of probable cause at the time of the~~  
11 ~~dismissal to believe the person committed the offense or because it~~  
12 ~~was void]; and~~

13 (B) the person has been released and the charge,  
14 if any, has not resulted in a final conviction and is no longer  
15 pending and there was no court ordered community supervision under  
16 Article 42.12 for any offense except for [~~other than~~] a Class C  
17 misdemeanor [~~, and~~

18 [~~(C) the person has not been convicted of a~~  
19 ~~felony in the five years preceding the date of the arrest].~~

20 SECTION 2. Article 55.01(a-1), Code of Criminal Procedure,  
21 is repealed.

22 SECTION 3. The change in law made by this Act applies to a  
23 person seeking expunction of records relating to an arrest  
24 regardless of whether the arrest occurred before, on, or after the  
25 effective date of this Act.

26 SECTION 4. This Act takes effect immediately if it receives  
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this  
2 Act does not receive the vote necessary for immediate effect, this  
3 Act takes effect September 1, 2009.