

By: Canales

H.B. No. 346

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the expunction of arrest records and files relating to
3 an offense for which an indictment or information was dismissed
4 with prejudice.

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); or

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 (2) the person has been released and the charge, if

1 any, has not resulted in a final conviction and is no longer pending
2 and there was no court-ordered community supervision under Chapter
3 42A for the offense, unless the offense is a Class C misdemeanor,
4 provided that:

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

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

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

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

24 (c) at least three years have elapsed
25 from the date of arrest if the arrest for which the expunction was
26 sought was for an offense punishable as a felony or if there was a
27 felony charge arising out of the same transaction for which the

1 person was arrested; or

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

6 (ii) if presented at any time following the
7 arrest;

8 (a) [7] was dismissed or quashed, and
9 the court finds that the indictment or information was dismissed or
10 quashed because the person completed a pretrial intervention
11 program authorized under Section 76.011, Government Code, because
12 the presentment had been made because of mistake, false
13 information, or other similar reason indicating absence of probable
14 cause at the time of the dismissal to believe the person committed
15 the offense, or because the indictment or information was void; or

16 (b) was dismissed with prejudice
17 based on a finding of the court other than a finding described by
18 Subparagraph (ii)(a), and the attorney representing the state has
19 not appealed the dismissal and appeal of the dismissal is no longer
20 possible; or

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

24 SECTION 2. The change in law made by this Act applies to a
25 petition for expunction filed on or after the effective date of this
26 Act, regardless of whether the offense that is the subject of the
27 petition occurred before, on, or after the effective date of this

1 Act.

2 SECTION 3. This Act takes effect September 1, 2017.