

## **BILL ANALYSIS**

Senate Research Center  
88R4045 CJD-F

H.B. 3956  
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State Affairs  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The 86th Legislature passed H.B. 1399, which required a defendant arrested for certain felony offenses to provide one or more specimens for the purpose of creating a DNA record with the Department of Public Safety. Expanding DNA collection practices to include all felony arrests would build on the success of past legislation, broaden the collection of samples, and, thereby, connect more open cases to offenders.

Law enforcement agencies and prosecutors across the state, as well as members from the DNA Justice Project, believe that the procedure for the expunction of an individual's records after the court provides notice of an acquittal, dismissal, or grant of relief needs clarification.

H.B. 3956 seeks to clarify the process for an individual's expunction of records upon notice from the court of an acquittal, dismissal, or grant of relief and providing for all felony arrests to warrant DNA sample collection. It accomplishes this by expanding the requirement's applicability to include all defendants arrested for offenses punishable as felonies; and by changing the entity responsible for collecting the specimen from the law enforcement agency arresting the defendant to the law enforcement agency booking the defendant.

H.B. 3956 amends current law relating to the creation of DNA records for a person arrested for a felony offense and the expunction of DNA records in certain circumstances.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 55.01, Code of Criminal Procedure, by adding Subsection (e), as follows:

(e) Provides that records and files relating to an arrest, for purposes of Article 55.01 (Right to Expunction), include:

(1) a DNA record created under Subchapter G (DNA Database System), Chapter 411, Government Code;

(2) any record of the collection of the specimen from which the DNA record was created; and

(3) any record of the transfer of the specimen to the Department of Public Safety of the State of Texas (DPS).

SECTION 2. Amends Section 3(c), Article 55.02, Code of Criminal Procedure, to require the clerk of the court, when the order of expunction is final, to send a certified copy of the order to the director of DPS (director) for purposes of Section 411.151 (Expunction or Removal of DNA Records), Government Code, to the Crime Records Service of DPS, and to each official or

agency or other governmental entity of this state or of any political subdivision of this state named in the order. Makes a nonsubstantive change.

SECTION 3. Amends Sections 411.1471(a), (b), and (e), Government Code, as follows:

(a) Provides that Section 411.1471 (DNA Records of Persons Arrested for or Convicted of Certain Offenses) applies to a defendant who is arrested for any offense punishable as a felony or convicted of certain offenses, including an offense punishable as a Class A or B misdemeanor, as applicable, under certain sections. Deletes existing text providing that this section applies to a defendant who is arrested for any offense punishable as a felony prohibited under certain sections or convicted of an offense under Title 5 (Offenses Against the Person), Penal Code, other than an offense described by Subdivision (1), that is punishable as a Class A misdemeanor or any higher category of offense, except for an offense punishable as a Class A misdemeanor under a certain section, or under Section 43.021 (Solicitation of Prostitution), Penal Code.

(b) Requires a law enforcement agency booking a defendant, rather than arresting a defendant, described by Subsection (a)(1) (relating to arresting a defendant for a felony under certain sections), immediately after fingerprinting the defendant and at the same location as the fingerprinting occurs, to require the defendant to provide one or more specimens for the purpose of creating a DNA record.

(e) Requires the court, as soon as practicable after the acquittal of a defendant described by Subsection (a)(1) or dismissal of the case against the defendant, or after a defendant has been granted relief in accordance with a writ of habeas corpus that is based on a court finding or determination that the defendant is actually innocent of a crime for which the defendant was sentenced, to provide notice of the acquittal, dismissal, or grant of relief to the law enforcement agency that took the specimen and DPS and to request that the director expunge the defendant's DNA record from the DNA database under Section 411.151. Requires the law enforcement agency, on receipt of the notice, to immediately destroy the record of the collection of the specimen, and requires DPS to destroy the specimen and the record of its receipt. Requires the court to promptly notify the defendant and the defendant's attorney after the notices required by this subsection have been provided.

Deletes existing text requiring the law enforcement agency taking the specimen, notwithstanding Subsection (d) (relating to requiring the director of DPS by rule to require law enforcement agencies taking a specimen under to preserve the specimen and maintain a record of the collection of the specimen), on acquittal of a defendant described by Subsection (a)(1) or dismissal of the case against the defendant, or after an individual has been granted relief in accordance with a writ of habeas corpus that is based on a court finding or determination that the person is actually innocent of a crime for which the person was sentenced, to immediately destroy the record of the collection of the specimen. Deletes existing text requiring the court, as soon as practicable after the acquittal of the defendant or the dismissal of the case, to provide notice of the acquittal or dismissal to the applicable law enforcement agency and DPS.

SECTION 4. Amends Section 411.151(a), Government Code, as follows:

(a) Requires the director to expunge a DNA record of an individual from a DNA database if the director receives an order of expunction under Article 55.02 (Procedure for Expunction), Code of Criminal Procedure, or a request from a court under Section 411.1471(e), or the person provides the director with a certified copy of a court order issued under a certain subchapter that seals the juvenile record of the adjudication that resulted in the DNA record.

Deletes existing text requiring the director to expunge a DNA record of an individual from a DNA database if the person notifies the director in writing that the DNA record has been ordered to be expunged under this section or Chapter 55 (Expunction of

Criminal Records), Code of Criminal Procedure, and provides the director with a certified copy of the court order that expunges the DNA record.

SECTION 5. Repealer: Section 411.151(b) (relating to authorizing a person to petition for the expunction of a DNA record if the person is entitled to the expunction of records relating to the offense to which the DNA record is related under a certain article), Government Code.

SECTION 6. Makes application of Articles 55.01 and 55.02, Code of Criminal Procedure, as amended by this Act, prospective.

SECTION 7. Makes application of Section 411.1471, Government Code, as amended by this Act, prospective.

SECTION 8. Effective date: September 1, 2023.