By:  Jones of Harris (Senate Sponsor - Huffman) H.B. No. 3686

(In the Senate - Received from the House May 15, 2023; May 18, 2023, read first time and referred to Committee on Criminal Justice; May 19, 2023, reported favorably by the following vote: Yeas 7, Nays 0; May 19, 2023, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Whitmire        X

Flores          X

Bettencourt     X

Hinojosa        X

Huffman         X

King            X

Miles           X

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

(B)  convicted and subsequently:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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