

By: Smith, Cook

H.B. No. 3956

A BILL TO BE ENTITLED

AN ACT

relating to the creation of DNA records for a person arrested for a felony offense and the expunction of DNA records in certain circumstances.

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

SECTION 1. Article 55.01, Code of Criminal Procedure, is amended by adding Subsection (e) to read as follows:

(e) For purposes of this article, records and files relating to an arrest include:

(1) a DNA record created under Subchapter G, 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.

SECTION 2. Section 3(c), Article 55.02, Code of Criminal Procedure, is amended to read as follows:

(c) When the order of expunction is final, the clerk of the court shall send a certified copy of the order to the director of the Department of Public Safety for purposes of Section 411.151, Government Code, to the Crime Records Service of the department, [~~Department of Public Safety~~] 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. The certified copy of

1 the order must be sent by secure electronic mail, electronic
2 transmission, or facsimile transmission or otherwise by certified
3 mail, return receipt requested. In sending the order to a
4 governmental entity named in the order, the clerk may elect to
5 substitute hand delivery for certified mail under this subsection,
6 but the clerk must receive a receipt for that hand-delivered order.

7 SECTION 3. Sections 411.1471(a), (b), and (e), Government
8 Code, are amended to read as follows:

9 (a) This section applies to a defendant who is:

10 (1) arrested for any offense punishable as a felony
11 ~~[prohibited under any of the following Penal Code sections:~~

- 12 [~~(A) Section 19.02,~~
- 13 [~~(B) Section 19.03,~~
- 14 [~~(C) Section 20.03,~~
- 15 [~~(D) Section 20.04,~~
- 16 [~~(E) Section 20.05,~~
- 17 [~~(F) Section 20.06,~~
- 18 [~~(G) Section 20A.02,~~
- 19 [~~(H) Section 20A.03,~~
- 20 [~~(I) Section 21.02,~~
- 21 [~~(J) Section 21.11,~~
- 22 [~~(K) Section 22.01,~~
- 23 [~~(L) Section 22.011,~~
- 24 [~~(M) Section 22.02,~~
- 25 [~~(N) Section 22.021,~~
- 26 [~~(O) Section 25.02,~~
- 27 [~~(P) Section 29.02,~~

1 ~~[(Q) Section 29.03,~~
2 ~~[(R) Section 30.02,~~
3 ~~[(S) Section 31.03,~~
4 ~~[(T) Section 43.03,~~
5 ~~[(U) Section 43.04,~~
6 ~~[(V) Section 43.05,~~
7 ~~[(W) Section 43.25, or~~
8 ~~[(X) Section 43.26]; or~~

9 (2) convicted of an offense:

10 (A) under Title 5, Penal Code, ~~[other than an~~
11 ~~offense described by Subdivision (1),]~~ that is punishable as a
12 Class A misdemeanor ~~[or any higher category of offense],~~ except for
13 an offense punishable as a Class A misdemeanor under Section 22.05,
14 Penal Code; or

15 (B) punishable as a Class A or B misdemeanor, as
16 applicable, under Section 21.08, 25.04, ~~[43.021,~~ or 43.24, Penal
17 Code.

18 (b) A law enforcement agency booking ~~[arresting]~~ a
19 defendant described by Subsection (a)(1), immediately after
20 fingerprinting the defendant and at the same location as the
21 fingerprinting occurs, shall require the defendant to provide one
22 or more specimens for the purpose of creating a DNA record.

23 (e) As soon as practicable after the ~~[Notwithstanding~~
24 ~~Subsection (d), or]~~ acquittal of a defendant described by
25 Subsection (a)(1) or dismissal of the case against the defendant,
26 or after a defendant ~~[an individual]~~ has been granted relief in
27 accordance with a writ of habeas corpus that is based on a court

1 finding or determination that the defendant [~~person~~] is actually
2 innocent of a crime for which the defendant [~~person~~] was sentenced,
3 the court shall provide notice of the acquittal, dismissal, or
4 grant of relief to the law enforcement agency that took [~~taking~~] the
5 specimen and the department and shall request that the director
6 expunge the defendant's DNA record from the DNA database under
7 Section 411.151. On receipt of the notice, the law enforcement
8 agency shall immediately destroy the record of the collection of
9 the specimen, and the department shall destroy the specimen and the
10 record of its receipt. The court shall promptly notify the
11 defendant and the defendant's attorney after the notices required
12 by this subsection have been provided [~~As soon as practicable after~~
13 ~~the acquittal of the defendant or the dismissal of the case, the~~
14 ~~court shall provide notice of the acquittal or dismissal to the~~
15 ~~applicable law enforcement agency and the department)].~~

16 SECTION 4. Section 411.151(a), Government Code, is amended
17 to read as follows:

18 (a) The director shall expunge a DNA record of an individual
19 from a DNA database if [~~the person~~]:

20 (1) the director receives:

21 (A) an order of expunction under Article 55.02,
22 Code of Criminal Procedure [~~notifies the director in writing that~~
23 ~~the DNA record has been ordered to be expunged under this section or~~
24 ~~Chapter 55, Code of Criminal Procedure, and provides the director~~
25 ~~with a certified copy of the court order that expunges the DNA~~
26 ~~record]; or~~

27 (B) a request from a court under Section

1 411.1471(e); or

2 (2) the person provides the director with a certified
3 copy of a court order issued under Subchapter C-1, Chapter 58,
4 Family Code, that seals the juvenile record of the adjudication
5 that resulted in the DNA record.

6 SECTION 5. Section 411.151(b), Government Code, is
7 repealed.

8 SECTION 6. Articles 55.01 and 55.02, Code of Criminal
9 Procedure, as amended by this Act, apply only to an order of
10 expunction of arrest records and files issued on or after the
11 effective date of this Act, regardless of when the underlying
12 arrest occurred.

13 SECTION 7. Section 411.1471, Government Code, as amended by
14 this Act, applies only to an offense committed on or after the
15 effective date of this Act. An offense committed before the
16 effective date of this Act is governed by the law in effect on the
17 date the offense was committed, and the former law is continued in
18 effect for that purpose. For purposes of this section, an offense
19 was committed before the effective date of this Act if any element
20 of the offense occurred before that date.

21 SECTION 8. This Act takes effect September 1, 2023.