

By: Jones of Harris, Curry, Little, LaHood,
Plesa, et al.

H.B. No. 463

A BILL TO BE ENTITLED

AN ACT

relating to certain pretrial hearings for defendants charged with certain controlled substance offenses and the expunction of all records and files related to arrests for certain controlled substance offenses.

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

SECTION 1. Section 1, Article 28.01, Code of Criminal Procedure, is amended to read as follows:

Sec. 1. The court may set any criminal case for a pre-trial hearing before it is set for trial upon its merits, and direct the defendant and the defendant's ~~his~~ attorney, if any of record, and the State's attorney, to appear before the court at the time and place stated in the court's order for a conference and hearing. The defendant must be present at the arraignment, and the defendant's ~~his~~ presence is required during any pre-trial proceeding. The pre-trial hearing shall be to determine any of the following matters:

(1) Arraignment of the defendant, if ~~such be~~ necessary; and appointment of counsel to represent the defendant, if ~~such be~~ necessary;

(2) Pleadings of the defendant;

(3) Special pleas, if any;

(4) Exceptions to the form or substance of the indictment or information;

1 (5) Motions for continuance either by the State or
2 defendant; provided that grounds for continuance not existing or
3 not known at the time may be presented and considered at any time
4 before the defendant announces ready for trial;

5 (6) Motions to suppress evidence, and when [~~When~~] a
6 hearing on the motion to suppress evidence is granted, the court may
7 determine the merits of the [~~said~~] motion on the motions
8 themselves, or upon opposing affidavits, or upon oral testimony,
9 subject to the discretion of the court;

10 (7) Motions for change of venue by the State or the
11 defendant; provided, however, that a motion [~~such motions~~] for
12 change of venue, if overruled at the pre-trial hearing, may be
13 renewed by the State or the defendant during the voir dire
14 examination of the jury;

15 (8) Discovery;

16 (9) Entrapment; [~~and~~]

17 (10) Motion for appointment of interpreter; and

18 (11) Motion to determine if a suspected controlled
19 substance contains a controlled substance.

20 SECTION 2. Chapter 28, Code of Criminal Procedure, is
21 amended by adding Article 28.15 to read as follows:

22 Art. 28.15. PRETRIAL HEARING ON PRESENCE OF A CONTROLLED
23 SUBSTANCE. (a) This article applies only to a defendant who is
24 charged with the commission of an offense under Subchapter D,
25 Chapter 481, Health and Safety Code, involving the manufacture,
26 delivery, or possession of a controlled substance.

27 (b) On the written motion of a defendant requesting a

determination that a suspected controlled substance contains a controlled substance, the court, at a pretrial hearing described by Article 28.01, shall:

(1) determine whether the suspected controlled substance contains a controlled substance; and

(2) issue written findings of fact and conclusions of law supporting the determination.

(c) At a hearing under this article, the attorney representing the state has the burden of providing a laboratory analysis showing that the suspected controlled substance contains a controlled substance.

(d) The court shall dismiss the criminal charge with prejudice if:

(1) the laboratory analysis of the suspected controlled substance finds no presence of a controlled substance; or

(2) the attorney representing the state fails to provide a laboratory analysis of the suspected controlled substance.

SECTION 3. Subchapter A, Chapter 55A, Code of Criminal Procedure, is amended by adding Article 55A.007 to read as follows:

Art. 55A.007. CERTAIN CONTROLLED SUBSTANCE OFFENSES. A person to whom this subchapter applies is entitled to the expunction of all records and files related to the arrest, including, as applicable, any records and files related to a conviction of the offense, if:

(1) the person is currently charged with, convicted

1 of, or placed on deferred adjudication community supervision under
2 Subchapter C, Chapter 42A, for an offense under Subchapter D,
3 Chapter 481, Health and Safety Code, involving the manufacture,
4 delivery, or possession of a controlled substance;

5 (2) a laboratory analysis of the suspected controlled
6 substance finds no presence of a controlled substance; and

7 (3) for a person who was convicted of or placed on
8 deferred adjudication community supervision for an offense, as
9 applicable:

10 (A) the person's sentence, including any term of
11 confinement or period of community supervision imposed and payment
12 of all fines and costs imposed, is finally discharged; or

13 (B) the person received a dismissal and discharge
14 under Article 42A.111 for the offense.

15 SECTION 4. Article 55A.053(a), Code of Criminal Procedure,
16 is amended to read as follows:

17 (a) A person to whom this subchapter applies is entitled to
18 have all records and files relating to the arrest expunged if:

19 (1) an indictment or information charging the person
20 with the commission of a misdemeanor offense based on the person's
21 arrest or charging the person with the commission of any felony
22 offense arising out of the same transaction for which the person was
23 arrested, when presented at any time following the arrest, was
24 dismissed or quashed; and

25 (2) the court finds that the indictment or information
26 was dismissed or quashed because:

27 (A) the person completed a veterans treatment

1 court program created under Chapter 124, Government Code, or former
2 law, subject to Subsection (b);

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

6 (C) the person completed a pretrial intervention
7 program authorized under Section 76.011, Government Code, other
8 than a program described by Paragraph (A) or (B);

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

14 (E) the presentment of the indictment or
15 information was made because of mistake, false information, or
16 other similar reason indicating absence of probable cause at the
17 time of the dismissal to believe the person committed the offense;
18 or

19 (F) ~~(E)~~ the indictment or information was
20 void.

21 SECTION 5. Subchapter E, Chapter 55A, Code of Criminal
22 Procedure, is amended by adding Article 55A.2035 to read as
23 follows:

24 Art. 55A.2035. NO CONTROLLED SUBSTANCE PRESENT. (a) A
25 trial court that is a district court or a district court in the
26 county in which the trial court is located shall enter an expunction
27 order for a person entitled to expunction under Article

1 55A.053(a)(2)(D) not later than the 30th day after the date the
2 court, as applicable:

3 (1) dismisses the case following a laboratory analysis
4 of a suspected controlled substance that finds no presence of a
5 controlled substance; or

6 (2) receives the information regarding the dismissal.

7 (b) Notwithstanding any other law, a court that enters an
8 expunction order under this article may not charge any fee or assess
9 any cost for the expunction.

10 SECTION 6. Article 55A.204, Code of Criminal Procedure, is
11 amended to read as follows:

12 Art. 55A.204. DUTIES OF ATTORNEY REPRESENTING STATE
13 REGARDING EXPUNCTION ORDER. The attorney representing the state
14 shall prepare an expunction order under Article 55A.202, ~~[or]~~
15 55A.203, or 55A.2035 for the court's signature and notify the Texas
16 Department of Criminal Justice if the person who is the subject of
17 the order is in the custody of the department.

18 SECTION 7. Article 55A.205, Code of Criminal Procedure, is
19 amended to read as follows:

20 Art. 55A.205. REQUIRED CONTENT OF EXPUNCTION ORDER. In an
21 expunction order entered under Article 55A.202, ~~[or]~~ 55A.203, or
22 55A.2035, the court shall:

23 (1) provide a listing of each official, agency, or
24 other entity of this state or political subdivision of this state
25 and each private entity that there is reason to believe has any
26 record or file that is subject to the order; and

27 (2) require that:

1 (A) the Texas Department of Criminal Justice send
2 to the court any documents delivered to the department under
3 Section 8(a), Article 42.09; and

4 (B) the Department of Public Safety and the Texas
5 Department of Criminal Justice delete or redact, as appropriate,
6 from their public records all index references to the records and
7 files that are subject to the expunction order.

8 SECTION 8. Article 55A.251, Code of Criminal Procedure, is
9 amended to read as follows:

10 Art. 55A.251. FILING OF PETITION. (a) A person who is
11 entitled to expunction of records and files under Article 55A.002,
12 55A.004, or 55A.005 or Subchapter B, or a person who is eligible for
13 expunction of records and files under Article 55A.101, may, subject
14 to Article 55A.252, file an ex parte petition for expunction in a
15 district court for the county in which:

16 (1) the petitioner was arrested; or

17 (2) the offense was alleged to have occurred.

18 (b) A person who is entitled to expunction of records and
19 files under Article 55A.007 may file an ex parte petition for
20 expunction:

21 (1) if the person is currently charged with the
22 offense, in the district court for the county in which the person
23 was arrested or the offense was alleged to have occurred; or

24 (2) if the person was convicted of the offense or
25 placed on deferred adjudication community supervision for the
26 offense, in the court that convicted the person or placed the person
27 on deferred adjudication community supervision.

SECTION 9. Article 55A.253, Code of Criminal Procedure, is amended to read as follows:

Art. 55A.253. CONTENTS OF PETITION. (a) An ex parte petition filed under Article 55A.251, 55A.252, or 55A.257 must be verified and must include, with respect to the person who is the subject of the petition, the following or an explanation for why one or more of the following is not included:

(1) the person's:

(A) full name;

(B) sex;

(C) race;

(D) date of birth;

(E) driver's license number;

(F) social security number; and

(G) address at the time of the arrest;

(2) the offense charged;

(3) the date the offense charged was alleged to have been committed;

(4) the date of arrest;

(5) the name of the county of arrest and if the arrest occurred in a municipality, the name of the municipality;

(6) the name of the arresting agency;

(7) the case number and court of offense; and

(8) together with the applicable physical or e-mail addresses, a list of all:

(A) law enforcement agencies, jails or other detention facilities, magistrates, courts, attorneys representing

the state, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;

(B) central federal depositories of criminal records that the person who is the subject of the petition has reason to believe have records or files that are subject to expunction; and

(C) private entities that compile and disseminate for compensation criminal history record information that the person who is the subject of the petition has reason to believe have information related to records or files that are subject to expunction.

(b) In addition to the information required under Subsection (a), an ex parte petition filed under Article 55A.251(b) must contain a laboratory report or other evidence demonstrating that no controlled substance was present in the suspected controlled substance.

SECTION 10. Article 55A.257, Code of Criminal Procedure, is amended to read as follows:

Art. 55A.257. DEPARTMENT OF PUBLIC SAFETY MAY FILE PETITION ON PERSON'S BEHALF. The director of the Department of Public Safety or the director's authorized representative may file on behalf of a person described by Article 55A.251(a) [~~55A.251~~] or 55A.256 an ex parte petition for expunction in a district court for the county in which:

(1) the person was arrested; or

(2) the offense was alleged to have occurred.

SECTION 11. Article 55A.353, Code of Criminal Procedure, is amended to read as follows:

Art. 55A.353. DISPOSITION OF EXPUNGED RECORDS. Except as provided by Articles 55A.354 and 55A.357, on receipt of an expunction order issued under Subchapter E or F, each official or agency or other governmental entity named in the order shall:

(1) as appropriate:

(A) return all records and files that are subject to the expunction order to the court; or

(B) in cases other than those described by Articles 55A.202, ~~[and]~~ 55A.203, and 55A.2035, if removal is impracticable, obliterate all portions of the record or file that identify the person who is the subject of the order and notify the court of the action; and

(2) delete from the named entity's public records all index references to the records and files that are subject to the expunction order.

SECTION 12. Articles 102.006(b) and (b-1), Code of Criminal Procedure, are amended to read as follows:

(b) The fees under Subsection (a) or the fee under Subsection (a-1), as applicable, shall be waived if:

(1) the petitioner seeks expunction of a criminal record that relates to an arrest for an offense of which the person was acquitted, other than an acquittal for an offense described by Article 55A.151, and the petition for expunction is filed not later than the 30th day after the date of the acquittal; or

(2) the petitioner is entitled to expunction under

1 Article 55A.007.

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

4 (1) under Article 55A.053(a)(2)(A) after successful
5 completion of a veterans treatment court program created under
6 Chapter 124, Government Code, or former law; ~~[or]~~

7 (2) under Article 55A.053(a)(2)(B) after successful
8 completion of a mental health court program created under Chapter
9 125, Government Code, or former law; or

10 (3) under Article 55A.053(a)(2)(D).

11 SECTION 13. The change in law made by this Act to Chapter
12 28, Code of Criminal Procedure, applies only to an offense
13 committed on or after the effective date of this Act. An offense
14 committed before the effective date of this Act is governed by the
15 law in effect on the date the offense was committed, and the former
16 law is continued in effect for that purpose. For purposes of this
17 section, an offense was committed before the effective date of this
18 Act if any element of the offense occurred before that date.

19 SECTION 14. For a person entitled to expunction under
20 Article 55A.007, Code of Criminal Procedure, as added by this Act,
21 this Act applies to an expunction of arrest records and files
22 relating to an offense that was committed before, on, or after the
23 effective date of this Act.

24 SECTION 15. (a) Subject to Subsection (b) of this section,
25 for a person entitled to expunction under Article 55A.053(a)(2)(D),
26 Code of Criminal Procedure, as amended by this Act:

27 (1) this Act applies only to the expunction of arrest

1 records and files related to:

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

4 (B) an arrest made on or after the effective date
5 of this Act; and

6 (2) expunction for a dismissal or arrest that occurred
7 before the effective date of this Act is governed by the law in
8 effect on the date of the dismissal or arrest, and the former law is
9 continued in effect for that purpose.

10 (b) For a person who is entitled to expunction under Article
11 55A.053(a)(2)(D), Code of Criminal Procedure, as amended by this
12 Act, before the effective date of this Act, notwithstanding the
13 30-day time limit provided for the court to enter an automatic order
14 of expunction under Article 55A.2035, Code of Criminal Procedure,
15 as added by this Act, the court shall enter an order of expunction
16 for the person as soon as practicable after the court receives
17 written notice from any party to the case about the person's
18 entitlement to the expunction.

19 SECTION 16. The changes in law made by this Act to Article
20 102.006, Code of Criminal Procedure, apply to the fees charged or
21 costs assessed for an expunction order entered on or after the
22 effective date of this Act.

23 SECTION 17. This Act takes effect September 1, 2025.