

BILL ANALYSIS

Senate Research Center
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H.B. 3686
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Criminal Justice
5/18/2023
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 3686 amends current law relating to the automatic expunction of arrest records and files after certain controlled substance offense charges are dismissed.

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(a), Code of Criminal Procedure, as follows:

(a) Provides that 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) makes no changes to this subdivision;

(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 (Community Supervision) 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) makes no changes to this subparagraph;

(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)-(c) makes no changes to these sub-subparagraphs;

(d) the person is charged solely with an offense under Subchapter D (Offenses and Penalties), 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; or

(e)-(f) makes no changes to these sub-subparagraphs; or

(B) makes no changes to this paragraph.

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

(a-3) Requires 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, to 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. Prohibits a court, that enters an order for expunction under this subsection, notwithstanding any other law from charging any fee or assessing any cost for the expunction.

SECTION 3. Amends Article 102.006(b-1), Code of Criminal Procedure, as follows:

(b-1) Requires that the fees under Subsection (a) (relating to requiring a petitioner seeking expunction of a criminal record in a district court to pay certain fees) to be waived if the petitioner is entitled to expunction under Article 55.01(a)(2)(A)(ii)(d). Makes nonsubstantive changes.

SECTION 4. (a) Provides that this Act applies only to the expunction of arrest records related to a charge for an offense that was dismissed on or after the effective date of this Act or an arrest made on or after the effective date of this Act.

(b) Provides that 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) Provides that the change in law made by this Act to Article 102.006 (Fees in Expunction Proceedings), 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) Requires the court to 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, 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.

SECTION 5. Effective date: September 1, 2023.