

SUBJECT: Expunction of arrest records and files

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Place, Talton, Farrar, Greenberg, Pickett, Pitts
0 nays
3 absent — Hudson, Nixon, Solis

WITNESSES: For — David Guinn, Texas Criminal Defense Lawyers Association
Against — Bill Lewis, Mothers Against Drunk Driving
On — Lon Curtis, Texas District and County Attorneys Association

BACKGROUND: Persons arrested for a felony or a misdemeanor can have their records and files expunged if they were tried and acquitted or convicted and later pardoned. Expunction of records also is allowed when each of the following circumstances exist:

- an indictment or information charging commission of a felony has not been presented or was presented and dismissed and the court found it was dismissed because of a mistake, false information or other similar reason indicating absence of probable cause or because it was void;
- the person has been released and a charge did not result in a final conviction and is no longer pending and there was no court-ordered community supervision (probation); and
- the person had not been convicted of a felony in the preceding five years.

DIGEST: HB 2730 would eliminate the requirement that to have arrest records and files expunged because of a dismissed indictment the court must find the dismissal resulted from mistake, false information or other similar reason indicating absence of probable cause. The bill also would eliminate the requirement that a person not have been convicted of a felony in the preceding five years.

HB 2730 would apply to requests for records expunction for arrests for an offense alleged to have been committed before, on or after the bill's effective date, September 1, 1995.

**SUPPORTERS
SAY:**

HB 2730 proposes a reasonable change in expunction requirements. Persons who would qualify for expunction if this bill were enacted have not been convicted of the crime they were arrested for. The thresholds in current law requiring dismissal to be due to mistake, false information or other similar reason indicating absence of probable cause are almost impossible to meet, even when an innocent person has been arrested. For example, a police officer operating under good faith could arrest someone before obtaining all facts in a case and the person could later be unable to have the arrest record expunged.

The information that prosecutors and law enforcement officers want to retain can be found in other records such as prosecutors' files and presentence investigation reports. Prosecutors would retain the ability to contest an expunction order and could do so if they thought it was important to preserve a person's record.

Only a small group of people would meet even the amended requirements for expunction, and few of them would take advantage of the option. Yet for some persons who were never convicted expunction of records could help in obtaining jobs that require a criminal record check. Expunction could be especially important in erasing records of youthful brushes with the law that ended in dismissal of the case. In some cases these youthful suspects think that if the case is dismissed their records have been expunged. They may tell potential employers that they have a clean criminal record, only to learn later that this is not true. Making records expunction slightly less cumbersome would mean greater use of the process by those who could benefit.

**OPPONENTS
SAY:**

HB 2730 would make it easier to have arrest records and files expunged in cases when expunction might not be advisable. Charges are dismissed for many reasons not due to mistakes, false information or other similar reasons, and it is important to have a record of these charges. For example, a person could have been arrested 10 times for burglary and could plea bargain on one charge and have the others dismissed, or a person could be

arrested in several counties, convicted in one and have charges dismissed in the other counties. In these circumstances, arrest records could be important in the determination of an offender's punishment, as research tools and to give law enforcement and prosecutors general background on a person. Indictments or informations also can be dismissed for other reasons such as a witness moving and being unable to be located at the time of a trial. There are certain crimes — such as driving while intoxicated, child abuse, domestic violence and sexual offenses — in which arrest records can prove especially valuable down the line.

Enactment of HB 2730 could discourage the use of deferred *prosecution*, an important prosecutor tool, by making it easier for persons whose prosecution was deferred to have their records expunged. Prosecutors would not know of the previous arrests if the person was later accused of another crime.

It would be especially unwise to make HB 2730 retroactive, applying to alleged offenses occurring at any time. This could mean that a prison inmate arrested for many crimes and convicted of one while others were dismissed could have records of the previous arrests expunged.