

SUBJECT: Timeline for the destruction of records following expunction

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Keel, Riddle, Ellis, Hodge, Pena, Talton

0 nays

3 absent — Denny, Dunnam, P. Moreno

WITNESSES: None

BACKGROUND: Code of Criminal Procedure, art. 55.01, governs who has a right to have all records and files relating to an arrest for a felony or misdemeanor expunged. A person is entitled to have these materials expunged if the person is acquitted of the offense for which the arrest was made, the person is convicted and subsequently pardoned, or each of the following conditions exist:

- an indictment or information has not been presented against the person or was quashed;
- the limitations period expired before the petition for expunction was filed, or the court finds that the indictment or information was quashed because of mistake or false information indicating absence of probable cause; and
- the person has been released, the charge has not resulted in a final conviction and is no longer pending, and the person had not been convicted of a felony in the five years preceding the date of the arrest.

A person is entitled to have any information that identifies the person, including name, address, date of birth, driver's license number, and social security number, contained in records and files relating to the arrest of another person expunged if:

- the information identifying the person asserting the entitlement was falsely given by the person arrested as the arrested person's identifying information without the other person's consent; and

- the only reason for the information identifying the person asserting the entitlement being contained in the arrest records and files of the person arrested is that the information was falsely given by the person arrested.

Code of Criminal Procedure, art. 55.02, establishes procedures for the expunction of records. At the request of the defendant and after notice to the state and a hearing, the trial court presiding over the case in which the defendant was acquitted shall enter an order of expunction for a person entitled to it not later than the 30th day after the date of the acquittal. In all other cases where a person seeks expunction, a person may file an ex parte petition for expunction in district court. The court must set a hearing on the matter no sooner than 30 days from the filing of the petition and must give notice to each official or agency named in the petition. If the court finds that the petitioner is entitled to expunction, it must enter an order of expunction. The person who is the subject of an expunction order or an agency protesting the expunction may appeal the court's decision in the same manner as in other civil cases.

Except in the case of a person who is the subject of an expunction order on the basis of an acquittal or an entitlement because the person arrested falsely gave his or her identifying information, the clerk of the court must destroy all files or other records on the first anniversary of the date the order of expunction is issued, unless the records or files were given to the person who is the subject of the order.

DIGEST: CSHB 2725 would amend Code of Criminal Procedure, art. 55.02, to require the clerk of the court to destroy all files or other records not earlier than the 60th day after the date the order of expunction was issued or later than the first anniversary of that date, unless the records or files were given to the person who was the subject of the order.

Furthermore, not later than the 30th day before the date on which the clerk destroyed the files or records, the clerk would have to provide notice by mail, electronic mail, or facsimile transmission to the attorney representing the state in the expunction proceeding. If the state's attorney objected to the destruction not later than the 20th day after receiving notice, the clerk could

not destroy the records until the first anniversary of the date the order of expunction was issued or the first business day after that date.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2003.

**SUPPORTERS
SAY:**

CSHB 2725 would reduce the financial burden on counties by permitting clerks to destroy records 60 days after the expunction order was issued, if the state did not object. Under current law, clerks must maintain these files for an entire year before they are destroyed. In large counties such as Harris county, the storage fees are burdensome. There is no good reason to maintain these files if neither party objects to their destruction, and this bill would reduce unnecessary storage costs.

CSHB 2725 would contain adequate safeguards to protect the state's interests. It would require the clerk to notify the state's attorney before the records were destroyed, and the state would have 20 days to object. If the state objected to the destruction of records for any reason, the clerk could not destroy them until the first anniversary of the date of the order of expunction. If an expunction case were not yet final, the state could object and the clerk would have to preserve the records.

**OPPONENTS
SAY:**

The state is entitled to a hearing and an appeal of an expunction order, and this bill would permit clerks to destroy records before the expunction case was final, to the detriment of the state.

NOTES:

The bill as introduced differs from the committee substitute in that it would have permitted a court clerk to destroy files or other records at any time up to the first anniversary of the date of the order of expunction, and would not have required notice to the state prior to destroying the files.