

SUBJECT: Prohibiting release of expunged criminal records

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Denny, Hodge, Pena, Reyna
0 nays
3 absent — Escobar, P. Moreno, Raymond

WITNESSES: For — None
Against — None

BACKGROUND: Code of Criminal Procedure (CCP), art. 55.01 allows expunction — sealing or destroying — of arrest records for felony or misdemeanor offenses if a person is tried for an offense and acquitted or is pardoned after being convicted. The statute also provides for expunction under other conditions, such as if an indictment is dismissed or quashed.

In 2003, the 78th Legislature enacted SB 1477 by West, which amended CCP, art. 55.03, to allow the release, dissemination, or use of criminal records and files that are the subject of a final expunction order under certain exceptions defined in Government Code, sec. 411.083. Under this section, criminal history record information is maintained by the Department of Public Safety (DPS) for use by the department and, except as provided by the section, may not be disseminated by the department.

The exceptions in sec. 411.083(b)(1), (2) and (3) allow DPS to grant access to criminal history record information to 1) criminal justice agencies; 2) noncriminal justice agencies authorized by federal statute or executive order or by state statute to receive such information; and 3) the person who is the subject of the information.

DIGEST: HB 269 would amend Criminal Procedure Code, art. 55.03 to prohibit the release, dissemination, or use of the expunged records and files for any purpose, including those specified in Government Code, sec. 411.083(b)(1), (2) and (3).

This 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, 2005. It would apply to any expunged records, regardless of the date of the expunction order.

**SUPPORTERS
SAY:**

HB 269 would correct an unintended consequence of the amendment made by the 78th Legislature to CCP, art. 55.03. SB 1477 was enacted to provide for orders of nondisclosure for persons placed on deferred adjudication, under which a judge may dismiss charges against a defendant who successfully completes a term of community supervision. Incorporated into the bill were minor changes made to the expunction articles, including changes to art. 55.03, which were meant to apply to orders of nondisclosure rather than orders of expunction.

However, because DPS has interpreted the current language to authorize it to maintain and disseminate expunged records and files, some individuals who have been granted a lawful expunction order nevertheless have been shown to have criminal history records when criminal checks have been processed against them.

HB 269 would resolve this problem by preventing any release of lawfully expunged information, resolving current ambiguities regarding what criminal history record information the DPS can release.

**OPPONENTS
SAY:**

Closure of criminal records could jeopardize public safety. Criminal and non-criminal justice agencies should be privy to criminal history record information. Full criminal background information should be available on people who apply to work in positions of public trust, such as in day-care centers, hospitals, and police departments.