

- SUBJECT:** Expunction of records before statute of limitations expires in some cases
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Gallego, Fletcher, Kent, Miklos, Moody, Pierson, Riddle
0 nays
4 absent — Christian, Hodge, Vaught, Vo
- WITNESSES:** For — George Gallagher, Criminal District Judges of Tarrant County; Mark Mendez, Tarrant County; (*Registered, but did not testify:* Betty Blackwell, Kristin Etter, Texas Criminal Defense Lawyers Association; Alison Dieter, Texas Moratorium Network; Clete McAlister, Tarrant County Criminal Judges; Amy Mills, Tarrant County District Attorney’s Office)

Against — None

On — Shannon Edmonds, Texas District and County Attorneys Association
- BACKGROUND:** Code of Criminal Procedure, Art. 55 lists the circumstances under which persons can ask to have their criminal records expunged. This can be done if a person is tried and acquitted or convicted and pardoned or, under sec. (a)(2)(A), if each of the following conditions exist:
- an indictment or information charging the person with a felony has not been presented or, if it was presented, it had been dismissed or quashed; and
 - the limitations period expired before the date on which a petition was filed; or
 - the indictment was dismissed or quashed because it had been made because of mistake, false information, or other reason indicating absence of probable cause or because it was void.
- In addition, the conditions in sec. (a)(2)(B) and (C) must also be met: the person must have been released from custody; the charge could not have resulted in a final conviction or be pending; and a court could not have

ordered the defendant to serve community supervision for any offense other than a class C misdemeanor; and the person cannot have been convicted of a felony in the five years preceding the date of the arrest.

DIGEST:

HB 3481 would make persons entitled to have their criminal records expunged if an indictment or information charging them with a felony was dismissed or quashed and either:

- the limitations period expired before the date on which a petition was filed; or
- the indictment was dismissed or quashed because it had been made because of mistake, false information, or other reason indicating absence of probable cause or because it was void.

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, 2009. The bill would apply to person seeking expunctions for arrests that occurred before, on, or after its effective date.

SUPPORTERS
SAY:

CSHB 3481 would clarify the meaning of Texas law on certain expunctions following a 2007 Texas Supreme Court ruling. The bill would clarify that the statute of limitations for a crime did not have to expire before a person's criminal records could be expunged if the indictment or information had been quashed or dismissed due to mistake, false information, or lack of probable cause.

One result from the Texas Supreme Court's ruling in *State v. Beam*, 226 S.W.3d 392 (Sup. 2007), was an interpretation that even if a criminal indictment was dismissed or quashed because of a mistake, false information or lack of probable cause, a defendant had to wait for the statute of limitations to run out before getting an expunction. This ruling went against the long-standing Texas law that allowed these expunctions without such a waiting period. When the Legislature amended the law in 2001, the intention clearly was to allow expunctions if the statute of limitations had run out *or* if the indictment had been made because of a mistake, false information, or some other reason that showed probable cause that the person did not commit the offense.

Requiring these defendants to wait for the statute of limitations to expire is unfair and unduly burdensome, especially for persons charged with crimes with long or no statute of limitations.

CSHB 3481 would return Texas to the practice in place before the court ruling by stating clearly that defendants whose indictments were quashed or dismissed due to mistake, false information, or lack of probable cause did not have to wait for the statute of limitations to run out before getting an expunction.

**OPPONENTS
SAY:**

The state should not limit the public's access to records of indictments by changing the effect of the Supreme Court's ruling. Currently, those whose indictments were quashed or dismissed due to mistake, false information, or lack of probable cause can have their records expunged after the reasonable requirement that they wait for the statute of limitations to run out. This allows the public appropriate access the criminal records while persons are still subject to prosecution for a crime.

NOTES:

The companion bill, SB 920 by Harris, was reported favorably, as substituted, by the Senate Criminal Justice Committee on April 14.

A similar bill, HB 3881 by Alonzo, was reported favorably, without amendment, by the Criminal Jurisprudence Committee and is on the Local, Consent, and Resolutions Calendar for May 5.