

- SUBJECT:** Allowing criminal records expunction if no prosecution
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Gallego, Hartnett, Aliseda, Carter, Rodriguez, Zedler  
0 nays  
3 absent — Burkett, Christian, Y. Davis
- WITNESSES:** For — Robert Doggett, Texas Housing Justice League; (*Registered, but did not testify*, Stefanie Collins, ACLU of Texas; Lauren Dimitry, Texans Care for Children; Kristin Etter, Texas Criminal Defense Lawyers Association; Maria Huemmer, Texas Catholic Conference – Roman Catholic Bishops of Texas; Mark Mendez, Tarrant County Commissioners Court; Erica Surprenant, Texas Criminal Justice Coalition)  
  
Against — Doug Smith, DWI Tracker Meghann Smith “In Memory”
- BACKGROUND:** Code of Criminal Procedure, Art. 55.01 lists the circumstances under which a person can ask to have his or her criminal record expunged. This can be done if a person is tried and acquitted or convicted and pardoned or, under sec. (a)(2)(A), if 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 that a petition was filed; or
  - the indictment was dismissed or quashed because the person completed a pretrial intervention program or because it had been made because of mistake, false information, or other reason indicating absence of probable cause, or because it was void.
- The conditions in sec. (a)(2)(B) and (C) also must be met: the person must have been released from custody; the charge could not have resulted in a final conviction or be pending; 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 2889 would expand the circumstances under which a person was entitled to ask to have a criminal record expunged to include if a prosecutor declined to prosecute the offense and did not object to an expunction after receiving notice of a request for expunction of all records and files relating to an arrest.

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, 2011. It would apply to expunctions of arrest records and files for offenses occurring before, on, or after that date.

**SUPPORTERS SAY:** HB 2889 is needed so that in appropriate circumstances persons who are arrested but not prosecuted for crimes can ask to have their criminal records expunged. It is unfair for persons whose cases were never prosecuted to be burdened with an arrest record that can cause problems when trying to get a job, rent an apartment, or apply to a school. HB 2889 would address this problem by establishing a clear path for those whose cases were not pursued to asking a judge to have their records expunged.

The bill would help address a problem that resulted from a 2007 Texas Supreme Court ruling, which was interpreted to mean 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 asking for an expunction. This meant that persons who were never prosecuted and may have been arrested by mistake often must wait years before asking for an expunction. This is unfair and unduly burdensome, especially for persons charged with crimes with long statutes of limitations.

HB 2889 would ensure that records were expunged only in appropriate cases. Expunctions would continue to occur only if approved by a judge, and would have to meet any other applicable requirements in current law. The bill would allow a prosecutor to object to an expunction to ensure records remained in any case in which prosecutors deemed it necessary. Prosecutors should be able to set up a system for handling these cases to ensure no cases were overlooked and that all requests were treated fairly.

OPPONENTS  
SAY:

The expunction statute should not be amended to reduce the availability of records to the public. This could restrict the ability of employers, landlords, and others to evaluate persons. Allowing these entities to receive the information that currently is public does not mean that they automatically will reject job or housing candidates, but ensures that the entities have more information on which to base their decisions. Current law requiring persons to wait until the statute of limitations expires allows the information to be available to the public for an appropriate amount of time.

OTHER  
OPPONENTS  
SAY:

A better approach might be to allow expunctions only if approved by prosecutors, instead of allowing them to occur if prosecutors do not object. This could help prevent expunctions from occurring if a case fell through the cracks and a prosecutor failed to make an objection. Other problems could arise if prosecutors were inundated with requests for expunctions or were perceived as not evaluating all requests fairly.

NOTES:

The companion bill, SB 1473 by Hinojosa, was referred to the Senate Criminal Justice Committee on March 22.