

- SUBJECT:** Expanding circumstances for the expunction of criminal records
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 7 ayes — Gallego, Hartnett, Aliseda, Burkett, Carter, Rodriguez, Zedler
0 nays
2 absent — Christian, Y. Davis
- WITNESSES:** For — Betty Blackwell; Paul Quinzi; (*Registered, but did not testify:* Andrea Bos, ACLU of Texas; Travis Leete, Texas Criminal Justice Coalition; Mark Mendez, Tarrant County Commissioners Court; Vikrant Reddy, Texas Public Policy Foundation; Ashley Harris, Texans Care for Children)

Against — (*Registered, but did not testify:* Keith Elkins, Freedom of Information Foundation of Texas; Ken Whalen, Texas Daily Newspaper Association, Texas Press Association)

On — Jon Roland
- 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:

CSHB 351 would revise the laws dealing with expunction of criminal records and create a procedure for the expunction of records of persons pardoned or found actually innocent.

Expunctions for actual innocence. CSHB 351 would expand the circumstances that allow for expunction after a person has been convicted to include defendants granted relief on the basis of actual innocence if a pardon or court order clearly indicated that it was granted on the basis of actual innocence.

The bill would establish a mandatory procedure for courts and prosecutors to follow to expunge records for persons convicted and then pardoned or granted relief on the basis of actual innocence if the pardon or a court order clearly indicated that it was granted on the basis of actual innocence.

District trial courts presiding over these cases would be required to enter an expunction order for the person pardoned or granted relief within 30 days of the court's receiving notice of the pardon or relief. Prosecutors would have to prepare the expunction order. The bill would establish who has to receive the expunction order and what the Department of Public Safety and Texas Department of Criminal Justice would have to do with records in these cases.

The court would be required to retain the records and files returned to it in these cases until the statute of limitations had expired for civil cases relating to the wrongful imprisonment of persons subject to the expunction order.

Expunctions after no final conviction. Expunctions also could be granted if persons had been released and charges had not resulted in a final conviction, were no longer pending, and there was no court-ordered community supervision for any offense arising out of the episode, except for a class C misdemeanor and if:

- regardless of whether a statute of limitations existed or had run out, certain conditions were met concerning an indictment charging someone with a felony or misdemeanor from the criminal episode. These following conditions would have to be met:
 - an indictment had not been presented following an arrest and, under a new requirement, the prosecutor certified that the arrest records and files were not needed for any criminal investigation or prosecution; or
 - using the same conditions as current law, the indictment was dismissed or quashed and it was done so because the person completed a pretrial intervention program or because it had been due to mistake, false information, or other reason indicating absence of probable cause, or because it was void.

Expunctions also could be granted, as under current law, if prosecution was no longer possible because the statute of limitations had run out.

CSHB 351 would repeal the current requirement that expunctions can only be granted if a person was not convicted of a felony in the five years preceding the date of an arrest that is the subject of the expunction request.

Other provisions. The bill would prohibit expunctions of records and files relating to arrest warrants issued for probation violations.

CSHB 351 would expand the circumstances under which persons could have criminal records expunged after being tried, convicted, and acquitted by trial courts and the Court of Criminal Appeals to include acquittals by intermediate courts of appeals if the period for granting a petition for discretionary review had expired.

District courts would be given authority to expunge records if the prosecutor in the case recommended the expunction before the person was tried, regardless of whether an indictment had been presented.

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, 2011. It would apply to expunctions for offenses that occurred before, on, or after the effective date and to pardons and other relief granted before, on, or after the effective date.

SUPPORTERS
SAY:

CSHB 351 is needed to ensure that persons wrongfully convicted can receive expunctions and to revise Texas law so that the statute of limitations for a crime would 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 good cause. 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.

Making it clear that expunctions can occur for actual innocence is important so that persons who have not been granted a pardon – but have been found actually innocent – can clear their names. Anyone found actually innocent deserves the ability to ask for an expunction. The bill would establish a procedure for courts to follow in these cases to ensure that the expunctions take place.

One interpretation from the Texas Supreme Court's ruling in *State v. Beam*, 226 S.W.3d 392 (Sup. 2007), was 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 conflicted with 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. When there is no statute of limitations, persons are unable to ever get an expunction. CSHB 351 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. With the availability of criminal records on the Internet, it important to have expunctions take place as soon as appropriate.

The bill would ensure that expunctions when an indictment had not been presented following an arrest would occur only in appropriate cases

because prosecutors would have to certify that the records no longer would be needed. Prosecutors would be able to set up a system for handling these cases to ensure they were treated fairly.

The bill would eliminate an unfair current requirement that persons wanting an expunction cannot have been convicted of a felony in the five years preceding the date of an arrest. It is unfair to allow a previous conviction to derail expunctions that meet all other requirements in CSHB 351.

OPPONENTS
SAY:

The state should not limit the public's access to records 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 to criminal records

Reducing the availability of what are now public records 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.

OTHER
OPPONENTS
SAY:

Limiting some expunctions only to those certified by prosecutors could be unfair to some who deserve to have their records expunged. Prosecutors could use this authority to routinely deny expunctions. It would be better to leave decisions in these cases up to the court.

It might be unwise to eliminate the current requirement that a person getting an expunction cannot have been convicted of a felony in the five years preceding the date of the arrest. This can serve as check on a person to ensure that expunction is warranted.

NOTES:

The committee substitute made several changes to the original bill, including adding provisions dealing with prosecutors certifying some expunctions, eliminating a requirement for some expunctions at least 180 days from when an indictment was dismissed or quashed, and prohibiting expunctions of records dealing with warrants related to probation violations.

HB 2889 by Madden also would revise the statutes dealing with record expunctions and was placed on the House's May 5 General State Calendar. 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.

In 2009, the 81st Legislature enacted a bill similar to CSHB 351, HB 3481 by Veasey, but the bill was vetoed by the governor.