

BILL ANALYSIS

Senate Research Center

H.B. 1323
By: Shields (Staples)
Criminal Justice
5/3/2001
Engrossed

DIGEST AND PURPOSE

Under current Texas law, when a person is arrested for a crime, an indictment or information must be filed charging that person with a crime. If it is determined that no probable cause existed, a trial court can dismiss the case. Under these circumstances a person can request expunction of the arrest record and other related files, but if the indictment or information used to charge the person for the alleged crime is quashed because of non-prosecution or other showing of lack of probable cause, no provisions exist for the application of expunction of the records against a person in such a situation. H.B. 1323 allows the expunction of criminal records after an indictment or information is quashed.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 55.01(a), Code of Criminal Procedure, to provide that a person who has been arrested for commission of either a felony or misdemeanor is entitled to have all records and files relating to the arrest expunged under certain specific conditions.

SECTION 2. Amends Article 55.01, Code of Criminal Procedure, by adding Subsection (d), to require the attorney representing the state, on the dismissal or quashing of an indictment or information and the expiration of a limitations period described by Subsection (a)(2)(A)(i), to automatically initiate proceedings to expunge arrest records relating to the defendant.

SECTION 3. Amends Section 1, Article 55.02, Code of Criminal Procedure, to delete existing text regarding the request of the defendant. Requires the trial court presiding over a case in which a defendant is, rather than the case in which the defendant was, acquitted and entitled to expunction under Article 55.01(a)(1)(A), after notice to the state and a hearing, to enter an order of expunction for the defendant not later than the 30th day after the date of the acquittal. Requires the law enforcement agency that arrested the defendant to provide to the court certain specific information or an explanation for why any of that information is not provided, rather than all of the information required in a petition for expunction under Section 2(b). Requires the law enforcement agency that arrested the defendant to pay any costs associated with providing to the court the information described by Subsection (c) and any other action necessary to obtain the expunction. Provides that the defendant or counsel for the defendant is not required to assist the court clerk in preparing copies of the expunction order for delivery under Section 3(c) or to take any other action necessary to obtain the expunction.

SECTION 4. Provides that the change in law made by Section 1 of this Act applies to arrest records and files created before, on, or after the effective date of this Act.

SECTION 5. Provides that the change in law made by Section 3 of this Act applies to a person who on or after the effective date of this Act is acquitted of an offense, regardless of whether the alleged offense for which the person was acquitted occurred before, on, or after the effective date of this Act.

SECTION 6. Effective date: upon passage or September 1, 2001.