

## **BILL ANALYSIS**

Senate Research Center  
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C.S.H.B. 3481  
By: Veasey, Hodge (Harris)  
Criminal Justice  
5/21/2009  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, the law is unclear on the matter of having a person's records expunged after a dismissal of charges, or a no-bill by a grand jury. Certain felonies have no statute of limitations and so it would appear that those records can never be expunged. This bill is designed to clarify the expunction statute, allowing a person to have his or her records expunged if the charges are dismissed, or if a grand jury no-bills the charges. A person who was mistakenly charged with a felony, especially one that carries a particularly negative stigma, should be able to expunge his or her records. This bill does not apply to acquittals or deferred adjudication.

C.S.H.B. 3481 entitles a person to have all records and files relating to the arrest expunged if an indictment or information charging the person with commission of a felony was dismissed or quashed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause.

### **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 Articles 55.01(a) and (b), Code of Criminal Procedure, as follows:

(a) Entitles a person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor to have all records and files relating to the arrest expunged if:

(1) the person is tried for the offense for which the person is arrested and is acquitted by the trial court, except as provided by Subsection (c) (relating to prohibiting a court from order the expunction of records and files under certain conditions), rather than Subsection (c) of this section, or convicted and subsequently pardoned; or

(2) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending, provided that there was no court-ordered community supervision under Article 42.12 (Community Supervision) for the offense, rather than each of the following conditions exist, and that:

(A) an indictment or information charging the person with the commission of a felony or misdemeanor was not presented against the person for the offense at any time before the date of the petition for expunction, and more than 180 days have elapsed from the date of the person's arrest for the offense; or regardless of whether there is no statute of limitations for the offense was dismissed or quashed and, if the offense was a felony, more than 180 days have elapsed from the date indictment or information was dismissed or quashed and the court finds that the indictment or information was dismissed or quashed because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense or because it was void; and

(B) prosecution of the person for the offense for which the person was arrested is no longer possible because the limitations period has expired.

Deletes existing text entitling a person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor to have all records and files relating to the arrest expunged if each of the following conditions exist: an indictment or information charging the person with commission of a felony was not presented against the person for an offense arising out of the transaction for which the person was arrested or, if an indictment or information charging the person with commission of a felony was presented, the indictment or information has been dismissed or quashed and the limitations period expired before the date on which a petition for expunction was filed under Article 55.02 (Evidence; Disposition; Affidavit); the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court ordered community supervision under Article 42.12 for any offense other than a Class C misdemeanor; and the person has not been convicted of a felony in the five years preceding the date of the arrest.

(b) Authorizes the district court, except as provided by Subsection (c), to expunge all records and files relating to the arrest of a person who has been arrested for commission of a felony or misdemeanor under the procedure established under Article 55.02 if the person meets certain criteria, including is acquitted by the court of criminal appeals or, if the period for granting a petition for discretionary review has expired, by a court of appeals; or an office of the attorney representing the state authorized by law to prosecute the offense for which the person was arrested recommends the expunction to the appropriate district court before the person is tried for the offense, regardless of whether an indictment or information has been presented against the person in relation to the offense. Makes nonsubstantive changes.

SECTION 2. Repealer: Article 55.01(a-1) (relating to providing that a person's conviction of a felony in the five years preceding the date of the arrest does not affect the person's entitlement to expunction for purposes of a certain ex parte petition filed on behalf of the person by the director of the Department of Public Safety), Code of Criminal Procedure.

SECTION 3. Provides that the change in law made by this Act applies to a person seeking expunction of records relating to an arrest regardless of whether the arrest occurred before, on, or after the effective date of this Act.

SECTION 4. Effective date: upon passage or September 1, 2009.