

BILL ANALYSIS

Senate Research Center
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S.B. 1454
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Criminal Justice
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law and court decisions have made it increasingly difficult for a person against whom certain criminal charges that have been dismissed to receive an expunction.

The ramifications of this legal barrier have negative consequences for persons seeking employment when confronted by employers who routinely implement background checks. If a case has been dismissed, is no longer under investigation, and the subject no longer faces prosecution for the offense, a person should be able to have his or her record expunged.

As proposed, S.B. 1454 amends current law relating to the right to an expunction of records and files relating to a person's arrest.

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, as follows:

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

(1) the person is tried for the offense for which the person was arrested and is acquitted by the trial court, except as provided by Subsection (c), rather than Subsection (c) of this section, or convicted and subsequently pardoned;

(2) prosecution of the person for the offense for which the person was arrested is no longer possible because the limitations period has expired or double jeopardy has attached; or

(3) each of the following conditions exist: an indictment or information charging the person with commission of a felony or misdemeanor has not been 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 or misdemeanor was presented, the indictment or information has been dismissed or quashed and 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 (Community Supervision) for any offense except for, rather than other than, a Class C misdemeanor.

Deletes existing text relating to certain conditions under which a person is entitled to have files and records of an arrest expunged, including that the limitations period expired before the date on which a petition for expunction was filed under Article 55.02 (Procedure for Expunction), or 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 the person has not been convicted of a felony in the five years preceding the date of the arrest.

SECTION 2. Repealer: Article 55.01(a-1) (relating to a person's conviction of a felony not affecting the person's entitlement to expunction), 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.