

BILL ANALYSIS

Senate Research Center

H.B. 351
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 351 accomplishes two objectives. First, the bill allows the district or county attorney to represent a person who has been exonerated following a wrongful conviction in having the records of the arrest, indictment, and imprisonment expunged.

Since the first DNA exoneration in 1989, 267 such exonerations have taken place in the United States. The most recent figures say that 42 exonerations have occurred in Texas; the most of any state. Twenty-four have come from Dallas County, the most from any single jurisdiction. Twenty-one Dallas County exonerations have involved the examination of DNA evidence.

Although exonerated, the criminal records connected to the arrest, indictment and conviction for the offense still exist. While an exoneration and pardon overturns the conviction and releases the subject from incarceration, an expunction is still needed to remove records of the offense from various national, state, and local criminal history records repositories.

Presently, the expunction process that must take place through the court system must be handled by a private attorney or a legal representative working on the behalf of the exoneree. This can involve significant court costs and possible attorney fees.

The second objective of H.B. 351 addresses the ability to expunge the records related to an offense where the case has been dismissed. This issue was also addressed within S.B. 462 that passed the Texas Senate during this legislative session.

Current law and court decisions have made it increasingly difficult for a person who has certain criminal charges that have been dismissed to receive an expunction. This was compounded by a July 2007 Texas Supreme Court ruling in *State vs. Beam* where the supreme court ruled that even a Class C misdemeanor that has been dismissed through completion of deferred adjudication cannot be expunged until the statute of limitations for the offense has expired.

Texas law allows the records of criminal charges to be expunged only under a narrow set of circumstances. Those circumstances include when a case has resulted in acquittal, when a person has received a pardon, and when the charges are the result of mistaken or misused identity.

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

H.B. 351 contains timelines regarding the eligibility for expunging misdemeanor and felony arrest records.

H.B. 351 amends current law relating to the 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, Code of Criminal Procedure, by amending Subsections (a), (a-1), (b), and (c) and adding Subsection (a-2), 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 was arrested and is:

(A) acquitted by the trial court, except as provided by Subsection (c); or

(B) convicted and subsequently:

(i) pardoned; or

(ii) otherwise granted relief on the basis of actual innocence with respect to that offense, if the applicable pardon or court order clearly indicates on its face that the pardon or order was granted or rendered on the basis of the person's actual innocence; or

(2) 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 the offense, unless the offense is a Class C misdemeanor, provided that:

(A) regardless of whether any statute of limitations exists for the offense and whether any limitations period for the offense has expired, an indictment or information charging the person with the commission of a felony or misdemeanor offense arising out of the transaction for which the person was arrested:

(i) has not been presented against the person at any time following the arrest, and:

(a) at least 180 days have elapsed from the date of arrest if the arrest was for an offense punishable as a Class C misdemeanor;

(b) at least one year has elapsed from the date of arrest if the arrest was for an offense punishable as a Class B or A misdemeanor;

(c) at least two years have elapsed from the date of arrest if the arrest was for an offense punishable as a felony; or

(d) the attorney representing the state certifies that the applicable arrest records and files are not needed for use in any criminal investigation or prosecution, including an investigation or prosecution of another person;

(ii) if an indictment or information charging the person with commission of a misdemeanor was presented at any time following the arrest, was dismissed or quashed, rather than 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; or

(iii) if an indictment or information charging the person with commission of a felony was presented at any time following the arrest, was dismissed or quashed, and the court finds that the indictment or information was dismissed or quashed because the person completed a pretrial intervention program authorized under Section 76.011, Government Code, 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 the indictment or information was void; or

(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 certain conditions exist, including an indictment or information charging the person with commission of a felony 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 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 (Procedure for Expunction), or 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. Makes conforming and nonsubstantive changes.

(a-1) Prohibits a person, notwithstanding any other provision of this article, from expunging records and files relating to an arrest that occurs pursuant to a warrant issued under Section 21 (Violation of Community Supervision: Detention and Hearing), Article 42.12. Deletes existing text providing that, notwithstanding Subsection (a)(2)(C), 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 an ex parte petition filed on behalf of the person by the director of the Department of Public Safety under Section 2(e), Article 55.02.

(a-2) Provides that, notwithstanding any other provision of this article, a person who intentionally or knowingly absconds from the jurisdiction after being released under Chapter 17 (Bail) following an arrest is not eligible under Subsection (a)(2)(A)(i)(a), (b), or (c) or Subsection (a)(2)(B) for an expunction of the records and files relating to that arrest.

(b) Authorizes a 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:

(1) the person is tried for the offense for which the person was arrested, convicted of the offense, and 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

(2) 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.

(c) Prohibits a court from ordering the expunction of records and files relating to an arrest for an offense for which a person is subsequently acquitted, whether by the trial court, a court of appeals, or the court of criminal appeals, if the offense for which the person was acquitted arose out of a criminal episode, as defined by Section 3.01 (Definition), Penal Code, and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode.

SECTION 2. Amends Article 55.02, Code of Criminal Procedure, by amending Section 1 and adding Section 1a, as follows:

Sec. 1. Makes a conforming change.

Sec. 1a. (a) Requires the trial court presiding over a case in which a defendant is convicted and subsequently pardoned or otherwise granted relief on the basis of actual innocence of the offense of which the defendant was convicted, if the trial court is a district court, or a district court in the county in which the trial court is located to enter an order of expunction for a person entitled to expunction under Article 55.01(a)(1)(B) not later than the 30th day after the date the court receives notice of the pardon or other grant of relief. Requires the person to provide to the district court all of the information required in a petition for expunction under Section 2(b) (requiring that the petition be verified and include certain information or an explanation for why certain information is not included).

(b) Requires the attorney for the state to prepare an expunction order under this section for the court's signature.

(c) Requires the court to include in an expunction order under this section a listing of each official, agency, or other entity of this state or political subdivision of this state and each private entity that there is reason to believe has any record or file that is subject to the order. Requires the court to also provide in an expunction order under this section that the Department of Public Safety of the State of Texas (DPS) and the Texas Department of Criminal Justice are required to:

(1) return to the court all records and files that are subject to the expunction order; and

(2) delete from its public records all index references to the records and files that are subject to the expunction order.

(d) Requires the court to retain all records and files returned to the court under Subsection (c) until the statute of limitations has run for any civil case or proceeding relating to the wrongful imprisonment of the person subject to the expunction order.

SECTION 3. Amends Section 2(a), Article 55.02, Code of Criminal Procedure, to authorize a person who is entitled to expunction of records under Article 55.01(a)(2), rather than Article 55.01(a), or a person who is eligible for expunction of records and files under Article 55.01(b) to file an ex parte petition for expunction in a district court for the county in which the petitioner was arrested, or the offense was alleged to have occurred.

SECTION 4. Amends Section 3(c), Article 55.02, Code of Criminal Procedure, as follows:

(c) Requires the clerk of the court, when the order of expunction is final, to send a certified copy of the order to the Crime Records Service of DPS and to each official or agency or other governmental entity of this state or of any political subdivision of this state named in the order, rather than designated by the person who is the subject of the order. Requires that the certified copy of the order be sent by secure electronic mail, electronic transmission, or facsimile transmission or otherwise by certified mail, return receipt requested. Authorizes the clerk, in sending the order to a governmental entity

named in the order, rather than a governmental entity designated by the person, to substitute hand delivery for certified mail under this subsection, but requires the clerk to receive a receipt for that hand-delivered order.

SECTION 5. Amends Section 4, Article 55.02, Code of Criminal Procedure, as follows:

Sec. 4. (a) Authorizes the court, if the state establishes that the person who is the subject of an expunction order is still subject to conviction for an offense arising out of the transaction for which the person was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against the person for the offense, to provide in its expunction order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the investigation.

(a-1) Authorizes the court to provide in its expunction order that the applicable law enforcement agency and prosecuting attorney may retain the arrest records and files of any person who becomes entitled to an expunction of those records and files based on the expiration of a period described by Article 55.01(a)(2)(A)(i)(a), (b), or (c), but without the certification of the prosecuting attorney as described by Article 55.01(a)(2)(A)(i)(d).

(a-2) Creates this subsection from existing text. Makes a conforming and nonsubstantive change.

SECTION 6. Amends Section 5(a), Article 55.02, Code of Criminal Procedure, as follows:

(a) Requires each official or agency or other governmental entity named in the order, except as provided by Subsections (f) (requiring each official, agency, or other governmental entity named in the order, on receipt of an order granting expunction to a person entitled to expunction, to obliterate all portions of the record or file that identify the petitioner and substitute for all obliterated portions of the record or file any available information that identifies the person arrested, and prohibits each official, agency, or other governmental entity named in the order from returning the record or file or deleting index references to the record or file) and (g) (authorizing an official, agency, court, or other entity may retain receipts, invoices, vouchers, or similar records of financial transactions that arose from the expunction proceeding or prosecution of the underlying criminal cause in accordance with internal financial control procedures), on receipt of the order, to:

(1) return all records and files that are subject to the expunction order to the court or in cases other than those described by Section 1a, if removal is impracticable, obliterate all portions of the record or file that identify the person who is the subject of the order and notify the court of its action; and

(2) delete from its public records all index references to the records and files that are subject to the expunction order.

SECTION 7. Provides that this Act applies to an expunction of arrest records and files for any criminal offense:

(1) that occurred before, on, or after the effective date of this Act; or

(2) for which a pardon or other relief on the basis of actual innocence was granted before, on, or after the effective date of this Act.

SECTION 8. Effective date: upon passage or September 1, 2011.