

BILL ANALYSIS

Senate Research Center

H.B. 3579
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Code of Criminal Procedure provides the requirements for expunction of criminal charges. Under Article 55.01 (Right to Explanation), a person, under certain circumstances is entitled to have “all records and files relating to [an] arrest expunged.” Historically, courts have had reached different conclusions as to whether an individual charge can be expunged if it meets the requirements of Article 55.01 or if every offense charged under a single arrest must meet the requirements in order for the entire arrest to be expunged.

A recent appellate court decision held that every offense for which a person was arrested must meet the requirements of Article 55.01 for the arrest to be expunged. For example, under the court’s ruling, if a person was pulled over and arrested for speeding and driving while intoxicated, and was acquitted of the driving while intoxicated (DWI) charge but not the speeding charge, that person could not have the DWI charge expunged because the speeding charge does not meet the requirements of Article 55.01. H.B. 3579 seeks to clarify the law on this issue.

In addition, as a result of various statutory changes over the years, tens of thousands of Texans, primarily those convicted of minor drug or property offenses, have been sentenced directly to confinement in a state jail with little or no access to treatment or support typically provided in community supervision. Reports indicate that incarceration in a state jail usually results in higher recidivism rates and higher costs than incarceration alternatives such as community supervision. H.B. 3579 addresses this issue by offering offenders charged with a state jail felony the opportunity to receive a conviction for a lower-grade offense to encourage more offenders to opt for community supervision, providing more rehabilitative and treatment opportunities and a better chance for reintegration into society. Finally, H.B. 3579 allows defendants of Class C misdemeanors to request a court to grant an order of nondisclosure.

H.B. 3579 amends current law relating to certain criminal record information and authorizes a fee.

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, as follows:

Art. 55.01. RIGHT TO EXPUNCTION. (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 related to the offense for which the person was arrested, rather than the arrest, expunged if:

- (1) Makes no change to this subdivision;
- (2) the person has been released and the charge, if any, for the offense for which the expunction is sought has been dismissed or has not resulted in a final

conviction for that offense, the charge is no longer pending, and there was no court-ordered community supervision under Article 42.12 (Community Supervision) for that 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 the offense, rather than the commission of a misdemeanor based on the person's arrest or charging the person with the commission of any felony offense arising out of the same transaction for which the person was arrested:

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

(a) at least 30, rather than 180, days have elapsed from the date of the arrest if the offense for which the expunction was sought was punishable, rather than the arrest for which the expunction was sought was for an offense punishable, as a Class C misdemeanor and if there was no felony charge arising out of the same transaction for which the person was arrested;

(b) at least 90 days have, rather than at least one year has, elapsed from the date of arrest if the offense for which the expunction was sought was punishable as a Class B or A misdemeanor and if there was no felony charge arising out of the same transaction for which the person was arrested;

(c) at least three years have elapsed from the date of arrest if the offense for which the expunction was sought was punishable as a felony or if there was a felony charge arising out of the same transaction for which the person was arrested; or

(d) the attorney representing the state certifies that the applicable records, rather than 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; or

(ii) if presented at any time following the person's 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 (Operation of Certain Services and Programs), 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) Makes no change to this paragraph.

Makes conforming changes.

(a-1) Prohibits a person, notwithstanding any other provisions of this article, from expunging offense records and files if the applicable arrest occurred pursuant to a warrant

issued under Section 21 (Violation of Community Supervision: Detention and Hearing), Article 42.12. Makes nonsubstantive changes.

(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 and to the proceedings conducted under Chapter 17.

(b) Authorizes a district court, except as provided by Subsection (c), to expunge all records and files relating to the offense with respect to, rather than 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 (Procedure for Expunction) if:

(1) the person is:

(A) tried for the offense, rather than tried for the offense for which the person was arrested;

(B) and (C) Makes no change to these paragraphs; or

(2) Makes no change to this subdivision.

(c) Prohibits a court from ordering the expunction of records and files relating to an offense, rather than 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 (Definitions), Penal Code, and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode.

(d) Entitles a person to have expunged any information that identifies the person, including the person's name, address, date of birth, driver's license number, and social security number, contained in records and files relating to another person's arrest or to any ensuing criminal proceedings based on that arrest, rather than relating to the arrest of another person expunged, if:

(1) Makes no change to this subdivision;

(2) the only reason for the information identifying the person asserting the entitlement being contained in the offense, rather than arrest, records and files of the person arrested is that the information was falsely given by the person arrested as the arrested person's identifying information.

SECTION 2. Amends Section 2a(b), Article 55.02, Code of Criminal Procedure, to require that the application be verified, include authenticated fingerprint records of the applicant, and include the following or an explanation for why certain information is not included, including a statement that the applicant is not the person arrested and for whom the applicable records and files were created, rather than for whom the arrest records and files were created.

SECTION 3. Amends Section 3(a), Article 55.02, Code of Criminal Procedure, to change a reference to arrest to offense.

SECTION 4. Amends Section 4(a-1), Article 55.02, Code of Criminal Procedure, to change a reference to arrest records and files to offense records and files.

SECTION 5. Amends Article 55.03, Code of Criminal Procedure, to provide that when the order of expunction is final, except as provided in Subdivision (3), rather than Subdivision (3) of this article, the person arrested may deny the occurrence of the arrest and any ensuing criminal proceedings based on the arrest; and to change a reference to arrest to offense.

SECTION 6. Amends Section 1, Article 55.04, Code of Criminal Procedure, to provide that a person who, while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state, acquires knowledge of an arrest or of criminal proceedings based on that arrest and who knows of an order expunging the records and files relating to the applicable offense, rather than relating to that arrest, commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files. Makes a nonsubstantive change.

SECTION 7. Amends Section 109.005(a), Business and Commerce Code, as added by Chapter 1200 (S.B. No. 1289), Acts of the 83rd Legislature, Regular Session, 2013, to change a reference to Section 411.081(d) to Section 411.081 (Application of Subchapter), Government Code.

SECTION 8. Amends Section 103.0211, Government Code, as follows:

Sec. 103.0211. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: GOVERNMENT CODE. Requires an accused or defendant, or a party to a civil suit, as applicable, to pay the following fees and costs under the Government Code if ordered by the court or otherwise required:

(1)-(4) Makes no change to these subdivisions;

(5) Makes a nonsubstantive change in this subdivision;

(6) fee paid on filing a petition for an order of nondisclosure of criminal history record information in certain deferred adjudication cases (Sec. 411.081(f-1), Government Code), rather than (Sec. 411.081, Government Code) in the amount of \$28; and

(7) fee paid on filing a petition for an order of nondisclosure of criminal history record information in certain fine-only misdemeanor cases (Sec. 411.081(f-1), Government Code) in the amount of \$28.

SECTION 9. Amends Section 411.081, Government Code, by adding Subsections (d-1), (d-2), (e-1), (h-1), and (h-2) and amending Subsections (f), (f-1), and (h), as follows:

(d-1) Authorizes a person who is convicted of and has satisfied the judgment for or who has received a dismissal after deferral of disposition for a fine-only misdemeanor, other than a traffic offense or an offense under a municipal ordinance or county order, notwithstanding any other provision of this chapter and subject to Subsection (e-1), to petition the court that convicted or granted a dismissal to the person for an order of nondisclosure under this subsection. Requires the court, after notice to the state, to hold a hearing on whether the person is entitled to file the petition and whether issuance of the order is in the best interest of justice. Authorizes the court, in determining whether granting the order is in the best interest of justice, to consider any factors the court considers relevant. Requires the court, if the court determines that granting the order is in the best interest of justice, to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the fine-only misdemeanor offense that is the subject of the petition. Authorizes the court, as a condition of granting the petition under this subsection for a person convicted of the offense, to require the defendant to perform community service, pay a fee, or both perform the community service and pay the fee as if the defendant had been placed on probation pending deferred disposition under Article 45.051 (Suspension of Sentence and Deferral of Final Disposition), Code of Criminal Procedure. Authorizes a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure under this subsection only to other criminal justice agencies for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order. Authorizes a person to petition the court for an order of nondisclosure under this subsection only on or after the first anniversary of the conviction or dismissal, as applicable.

(d-2) Authorizes a person eligible for an order of nondisclosure under Subsection (d-1) who is also eligible for an order of expunction under Chapter 55 (Expunction of Criminal Records), Code of Criminal Procedure, for that offense to petition under either provision or both, as appropriate.

(e-1) Provides that a person is not entitled to petition the court under Subsection (d-1) if the person has been previously convicted of or placed on deferred adjudication for any offense other than an offense under the Transportation Code punishable by fine only, regardless of whether that offense is subject to an order of nondisclosure of criminal history record information granted under this section or any other law.

(f) Provides that, for purposes of Subsections (d), (e), and (e-1), rather than Subsection (d), a person is considered to have been placed on deferred adjudication community supervision if, regardless of the statutory authorization, certain conditions are met. Makes a nonsubstantive change.

(f-1) Authorizes a person who petitions the court for an order of nondisclosure under Subsection (d) or (d-1) to file the petition in person, electronically, or by mail.

(h) Requires the clerk of a court that collects a fee paid under Subsection (f-1) for a petition filed under Subsection (d), rather than a fee under Subsection (d), to remit the fee to the comptroller of public accounts of the State of Texas (comptroller) not later than the last day of the month following the end of the calendar quarter in which the fee is collected, and requires the comptroller to deposit the fee in the general revenue fund.

(h-1) Requires the clerk of a court that collects a fee paid under Subsection (f-1) for a petition filed under Subsection (d-1) to deposit the fee to the credit of the general fund of the municipality or county, as applicable.

(h-2) Creates this subsection from existing text and makes no further change.

SECTION 10. Reenacts Section 411.081(i), Government Code, as amended by Chapters 42 (S.B. 966), 266 (H.B. 729), and 583 (S.B. 869), Acts of the 83rd Legislature, Regular Session, 2013, and amends it as follows:

(i) Authorizes a criminal justice agency to disclose criminal history record information that is the subject of an order of nondisclosure under this section, rather than under Subsection (d), to the following noncriminal justice agencies or entities only:

(1)-(11) Makes no change to these subdivisions;

(12) the Department of State Health Services (DSHS), a local mental health service, a local intellectual and developmental disability authority, or a community center providing services to persons with mental illness or intellectual or developmental disabilities, rather than DSHS, a local mental retardation authority, or a community center providing services to persons with mental illness or retardation;

(13)-(24) Makes no change to these subdivisions;

(25) a county clerk's office in relation to a proceeding for the appointment of a guardian under Title 3 (Guardianship and Related Procedures), Estates Code, rather than under Chapter XIII (Guardianship), Texas Probate Code;

(26)-(28) Makes no change to these subdivisions;

(29) Redesignates Subdivision (30) as Subdivision (29). Makes no further change.

SECTION 11. Amends Section 411.0851(a), Government Code, to change a reference to Section 411.081(d) to Section 411.081.

SECTION 12. Amends the heading to Section 552.142, Government Code, to read as follows:

Sec. 552.142. EXCEPTION: CONFIDENTIALITY OF RECORDS OF CERTAIN CRIMINAL HISTORY INFORMATION.

SECTION 13. Amends Section 552.142(a), Government Code, to change a reference to Section 411.081(d) to Section 411.081.

SECTION 14. Amends Section 552.1425(a), Government Code, to change a reference to Section 411.081(d) to Section 411.081.

SECTION 15. Amends Section 53.021(e), Occupations Code, to change a reference to Section 411.081(i)(19) to Section 411.081(i)(18).

SECTION 16. Amends Section 15, Article 42.12, Code of Criminal Procedure, by adding Subsections (l), (m), and (n), as follows:

(l) Authorizes the judge, on written motion of a defendant after completion of two-thirds of the original community supervision period for a state jail felony with respect to which written consent was obtained under Section 12.44(c), Penal Code, to review the defendant's record and consider whether to amend the record of conviction to reflect a conviction for a Class A misdemeanor in lieu of a state jail felony. Authorizes the judge, on disposition of the community supervision in a manner provided by Section 20, to, on discharge of the defendant, amend the record of conviction to reflect a conviction for a Class A misdemeanor in lieu of a state jail felony, subject to Subsection (m), if:

(1) the offense for which the defendant was placed on community supervision was not an offense:

(A) under Section 30.02 (Burglary), Section 30.04 (Burglary of Vehicle), Section 39.04(a)(2) (provides that an official of a correctional facility, an employee of a correctional facility, a person other than an employee who works for compensation at a correctional facility, a volunteer at a correctional facility, or a peace officer commits an offense if the person intentionally engages in sexual contact, sexual intercourse, or deviate sexual intercourse with an individual in custody or, in the case of an individual in the custody of the Texas Youth Commission, employs, authorizes, or induces the individual to engage in sexual conduct or a sexual performance), Section 49.045 (Driving While Intoxicated with Child Passenger), or Title 5 (Offenses Against the Person), Penal Code;

(B) under Article 62.102 (Failure to Comply with Registration Requirements); or

(C) involving family violence, as defined by Section 71.004 (Family Violence), Family Code;

(2) the defendant has fulfilled to the judge's satisfaction all the conditions of community supervision, including the payment of all required restitution, and is not delinquent on the payment of any fines, costs, and fees that the defendant has the ability to pay;

(3) the defendant files with the written motion a statement that:

(A) contains a summary of the defendant's performance during community supervision, including compliance with the conditions of community supervision; and

(B) asserts that the defendant meets the conditions for an amendment of the record of conviction under this subsection;

(4) the defendant provides a copy of the motion and statement to the attorney representing the state; and

(5) at the hearing held on the motion, the judge finds that an amendment of the record of conviction is in the best interest of justice.

(m) Prohibits a judge who amends a record of conviction under Subsection (l) from modifying the name of the state jail felony offense for which the judge placed the defendant on community supervision. Provides that a defendant whose record of conviction is amended under Subsection (l) is not considered to have been convicted of a felony with respect to the modified offense.

(n) Provides that a record of conviction that is amended under Subsection (l) supersedes and takes the place of the record of conviction as it existed on the original date of conviction. Provides that a judge retains jurisdiction for the purposes of Subsection (l) only until the expiration of the term of community supervision.

SECTION 17. Amends Section 12.44, Penal Code, by adding Subsection (c), as follows:

(c) Authorizes the court, with the written consent of the prosecuting attorney prior to sentencing, to amend the record of conviction to reflect a conviction for a Class A misdemeanor in lieu of a state jail felony as provided by Section 15(l), Article 42.12, Code of Criminal Procedure.

SECTION 18. Provides that this Act applies to an expunction of records and files relating to any criminal offense that occurred before, on, or after the effective date of this Act.

SECTION 19. Provides that this Act applies to a petition for an order of nondisclosure that is filed on or after the effective date of this Act, regardless of whether the misdemeanor that is the subject of the petition occurred before, on, or after the effective date of this Act.

SECTION 20. Provides that the changes in law made by this Act in amending Section 15, Article 42.12, Code of Criminal Procedure, and adding Section 12.44(c), Penal Code, apply only to a defendant who is placed on community supervision for an offense committed on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 21. Effective date: September 1, 2015.