

## **BILL ANALYSIS**

H.B. 3881  
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Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Under Texas' current Code of Criminal Procedure, certain individuals who have been mistakenly arrested are unable to have all arrest records relating to a mistaken arrest expunged, and, in some cases, must wait 10 or more years for the statute of limitation to expire on a charge before filing for an expungement. Under current law, a person mistakenly arrested for trespassing can get an expunction after two years, yet if someone is mistakenly arrested for embezzlement, an individual who everyone, including a judge, agrees is innocent must wait 10 years for the record to be expunged. Other charges, such as sexual assault of a child, are never eligible for expungement because there is no statute of limitation for such a crime. An individual who is wrongly arrested for such a charge has the record in the individual's publicly available files for the individual's entire life, even if everyone involved in the case, including a judge, agrees that the individual is innocent.

Current statute is unclear as to whether the statute of limitation must expire before an expunction can be filed, which can delay expunction and make other expunctions impossible since the statute of limitation never expires for some offenses. Also, the law as it currently stands, does not allow a prosecutor to use discretion as to whether an individual merits an expunction, regardless of whether the defendant has been indicted. This bill offers a simple and practical solution to the dilemma of an agreed innocent, mistakenly arrested defendant being unable to expunge a criminal record. The bill allows individuals to get prompt relief from being labeled as criminals in public files where employers and landlords might interpret an arrest record as evidence of an individual's guilt.

H.B. 3881 authorizes a district court to employ additional means of expunction if the appropriate prosecutor believes an expunction is deserved and necessary, and specifies that such additional means apply regardless of whether the defendant in question has been indicted.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 3881 amends the Code of Criminal Procedure to authorize, with certain exceptions, a district court to expunge all records and files relating to the arrest of a person who has a felony or misdemeanor if an office of the attorney representing the state authorized to prosecute the offense 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.

H.B. 3881 clarifies one of the five conditions that must exist, in one of the two scenarios in which a person who has been arrested is entitled to have all arrest records relating to the arrest expunged, to provide that, if an indictment or information charging the person with commission

of a felony was dismissed or quashed in a certain manner, either:

- the limitations period expired before the date on which a petition for expunction was filed; 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.

**EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.