

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1454
By: West
Criminal Justice
5/4/2009
Committee Report (Substituted)

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 have been dismissed to receive an expunction.

This legal barrier can 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.

C.S.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; 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 any offense except for a Class C misdemeanor, provided that:

(A) an indictment or information charging the person with the commission of a felony or misdemeanor has not been presented within the previous 180 days against the person for an offense arising out of the transaction for which the person was arrested or has been dismissed or quashed for more than 180 days, 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; 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 to have all records and files relating to the arrest expunged if each of certain conditions exist, including that the indictment or information has been dismissed or quashed if an indictment or information

charging the person with commission of a felony was presented 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 nonsubstantive changes.

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.