

SENATE AMENDMENTS

2nd Printing

By: Veasey, Hodge

H.B. No. 3481

A BILL TO BE ENTITLED

AN ACT

relating to the right to an expunction of records and files relating to a person's arrest.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Articles 55.01(a) and (a-1), Code of Criminal Procedure, are amended to read as follows:

(a) 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:

(A) acquitted by the trial court, except as provided by Subsection (c) ~~[of this section]~~; or

(B) convicted and subsequently pardoned; or

(2) each of the following conditions exist:

(A) 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;

(B) if an indictment or information charging the person with commission of a felony was dismissed or quashed as

1 described by Paragraph (A), either ~~[and]~~:

2 (i) the limitations period expired before
3 the date on which a petition for expunction was filed under Article
4 55.02; or

5 (ii) the court finds that the indictment or
6 information was dismissed or quashed because the presentment had
7 been made because of mistake, false information, or other similar
8 reason indicating absence of probable cause at the time of the
9 dismissal to believe the person committed the offense or because it
10 was void;

11 (C) ~~[(B)]~~ the person has been released and the
12 charge, if any, has not resulted in a final conviction and is no
13 longer pending and there was no court ordered community supervision
14 under Article 42.12 for any offense other than a Class C
15 misdemeanor; and

16 (D) ~~[(C)]~~ the person has not been convicted of a
17 felony in the five years preceding the date of the arrest.

18 (a-1) Notwithstanding Subsection (a)(2)(D) ~~[(a)(2)(C)]~~, a
19 person's conviction of a felony in the five years preceding the date
20 of the arrest does not affect the person's entitlement to
21 expunction for purposes of an ex parte petition filed on behalf of
22 the person by the director of the Department of Public Safety under
23 Section 2(e), Article 55.02.

24 SECTION 2. The change in law made by this Act applies to a
25 person seeking expunction of records relating to an arrest
26 regardless of whether the arrest occurred before, on, or after the
27 effective date of this Act.

1 SECTION 3. This Act takes effect immediately if it receives
2 a vote of two-thirds of all the members elected to each house, as
3 provided by Section 39, Article III, Texas Constitution. If this
4 Act does not receive the vote necessary for immediate effect, this
5 Act takes effect September 1, 2009.

ADOPTED

MAY 28 2009

Atty. Gen.
Secretary of the Senate

By: Harris

H.B. No. 3481

Substitute the following for H.B. No. 3481:

By: *John Harris*

C.S. H.B. No. 3481

A BILL TO BE ENTITLED

AN ACT

relating to the right to an expunction of records and files relating to a person's arrest.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Articles 55.01(a) and (b), Code of Criminal Procedure, are amended to read as follows:

(a) 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:

(A) acquitted by the trial court, except as provided by Subsection (c) ~~[of this section]~~; or

(B) 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, provided that there was no court-ordered community supervision under Article 42.12 for the offense and that ~~[each of the following conditions exist]:~~

(A) an indictment or information charging the person with the commission of a felony or misdemeanor:

(i) was [has] not [been] presented against the person for the [an] offense at any time before the date of the

1 petition for expunction, and more than 180 days have elapsed from
2 the date of the person's arrest for the offense; [~~arising out of the~~
3 ~~transaction for which the person was arrested~~] or

4 (ii) regardless of whether there is no
5 statute of limitations for the offense, was[~~, if an indictment or~~
6 ~~information charging the person with commission of a felony was~~
7 ~~presented, the indictment or information has been~~] dismissed or
8 quashed and, if the offense was a felony, more than 180 days have
9 elapsed from the date the indictment or information was dismissed
10 or quashed[~~,~~] and~~[+]~~

11 [~~(i) the limitations period expired before~~
12 ~~the date on which a petition for expunction was filed under Article~~
13 ~~55.02, or~~

14 [~~(ii)~~] the court finds that the indictment
15 or information was dismissed or quashed because the presentment had
16 been made because of mistake, false information, or other similar
17 reason indicating absence of probable cause at the time of the
18 dismissal to believe the person committed the offense or because it
19 was void; or

20 (B) prosecution of the person for the offense for
21 which the person was arrested is no longer possible because the
22 limitations period has expired [~~the person has been released and~~
23 ~~the charge, if any, has not resulted in a final conviction and is no~~
24 ~~longer pending and there was no court ordered community supervision~~
25 ~~under Article 42.12 for any offense other than a Class C~~
26 ~~misdemeanor, and~~

27 [~~(C) the person has not been convicted of a~~

1 ~~felony in the five years preceding the date of the arrest]~~.

2 (b) Except as provided by Subsection (c) ~~[of this section]~~,
3 a district court may expunge all records and files relating to the
4 arrest of a person who has been arrested for commission of a felony
5 or misdemeanor under the procedure established under Article 55.02
6 ~~[of this code]~~ if:

7 (1) the person is:

8 (A) ~~[(1)]~~ tried for the offense for which the
9 person was arrested;

10 (B) ~~[(2)]~~ convicted of the offense; and

11 (C) ~~[(3)]~~ acquitted by the court of criminal
12 appeals or, if the period for granting a petition for discretionary
13 review has expired, by a court of appeals; or

14 (2) an office of the attorney representing the state
15 authorized by law to prosecute the offense for which the person was
16 arrested recommends the expunction to the appropriate district
17 court before the person is tried for the offense, regardless of
18 whether an indictment or information has been presented against the
19 person in relation to the offense.

20 SECTION 2. Article 55.01(a-1), Code of Criminal Procedure,
21 is repealed.

22 SECTION 3. The change in law made by this Act applies to a
23 person seeking expunction of records relating to an arrest
24 regardless of whether the arrest occurred before, on, or after the
25 effective date of this Act.

26 SECTION 4. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2009.

ADOPTED

FLOOR AMENDMENT NO. 1

MAY 23 2009

BY: Roger W. N.

Antony D. Paul
Secretary of the Senate

1 Amend C.S.H.B. No. 3481 (senate committee report) as
2 follows:

3 (1) In SECTION 1 of the bill, strike amended Article
4 55.01(a), Code of Criminal Procedure (page 1, lines 15-60), and
5 substitute the following:

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

10 (1) the person is tried for the offense for which the
11 person was arrested and is:

12 (A) acquitted by the trial court, except as
13 provided by Subsection (c) [~~of this section~~]; or

14 (B) convicted and subsequently:

15 (i) pardoned; or

16 (ii) otherwise granted relief on the basis
17 of actual innocence with respect to that offense; or

18 (2) the person has been released and the charge, if
19 any, has not resulted in a final conviction and is no longer
20 pending, provided that there was no court-ordered community
21 supervision under Article 42.12 for the offense and that [each
22 of the following conditions exist]:

23 (A) an indictment or information charging the
24 person with the commission of a felony or misdemeanor:

25 (i) was [~~has~~] not [~~been~~] presented against
26 the person for the [~~an~~] offense at any time before the date of
27 the petition for expunction, and more than 180 days have elapsed
28 from the date of the person's arrest for the offense; [arising
29 out of the transaction for which the person was arrested] or

1 (ii) regardless of whether any statute of
2 limitations exists for the offense and whether any limitations
3 period for the offense has expired, was~~[, if an indictment or~~
4 ~~information charging the person with commission of a felony was~~
5 ~~presented, the indictment or information has been]~~ dismissed or
6 quashed and, if the offense was a felony, more than 180 days
7 have elapsed from the date the indictment or information was
8 dismissed or quashed~~[,]~~ and~~[+]~~

9 ~~[(i) the limitations period expired before~~
10 ~~the date on which a petition for expunction was filed under~~
11 ~~Article 55.02; or~~

12 ~~[(ii)]~~ the court finds that the indictment
13 or information was dismissed or quashed because the presentment
14 had been made because of mistake, false information, or other
15 similar reason indicating absence of probable cause at the time
16 of the dismissal to believe the person committed the offense or
17 because it was void; or

18 (B) prosecution of the person for the offense
19 for which the person was arrested is no longer possible because
20 the limitations period has expired ~~[the person has been released~~
21 ~~and the charge, if any, has not resulted in a final conviction~~
22 ~~and is no longer pending and there was no court ordered~~
23 ~~community supervision under Article 42.12 for any offense other~~
24 ~~than a Class C misdemeanor; and~~

25 ~~[(C) the person has not been convicted of a~~
26 ~~felony in the five years preceding the date of the arrest].~~

27 (2) Strike SECTION 3 of the bill (page 2, lines 18-21) and
28 substitute the following appropriately numbered SECTION:

29 SECTION _____. This Act applies to an expunction of arrest
30 records and files for any criminal offense:

31 (1) that occurred before, on, or after the effective

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1 date of this Act; or

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

5 (3) Add the following appropriately numbered SECTIONS to
6 the bill:

7 SECTION ____ . Article 55.02, Code of Criminal Procedure, is
8 amended by adding Section 1a to read as follows:

9 Sec. 1a. (a) The trial court presiding over a case in
10 which a defendant is convicted and subsequently pardoned or
11 otherwise subsequently granted relief on the basis of actual
12 innocence of the offense of which the defendant was convicted,
13 if the trial court is a district court, or a district court in
14 the county in which the trial court is located, shall enter an
15 order of expunction for a person entitled to expunction under
16 Article 55.01(a)(1)(B) not later than the 30th day after the
17 date the court receives notice of the pardon or other grant of
18 relief. The person shall provide to the district court all of
19 the information required in a petition for expunction under
20 Section 2(b).

21 (b) The attorney for the state shall prepare an expunction
22 order under this section for the court's signature.

23 (c) The court shall include in an expunction order under
24 this section a listing of each official, agency, or other entity
25 of this state or political subdivision of this state and each
26 private entity that there is reason to believe has any record or
27 file that is subject to the order. The court shall also provide
28 in an expunction order under this section that the Department of
29 Public Safety and the Texas Department of Criminal Justice
30 shall:

31 (1) return all records and files that are subject to

1 the expunction order to the court; and

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

5 (d) The court shall retain all records and files provided
6 to the court under Subsection (c) until the statute of
7 limitations has run for any civil case or proceeding relating to
8 the wrongful imprisonment of the person subject to the
9 expunction order.

10 SECTION _____. Subsection (a), Section 2, Article 55.02,
11 Code of Criminal Procedure, is amended to read as follows:

12 (a) A person who is entitled to expunction of records and
13 files under Article 55.01(a)(2) [~~55.01(a)~~] or a person who is
14 eligible for expunction of records and files under Article
15 55.01(b) may file an ex parte petition for expunction in a
16 district court for the county in which:

17 (1) the petitioner was arrested; or

18 (2) the offense was alleged to have occurred.

19 SECTION _____. Subsection (c), Section 3, Article 55.02,
20 Code of Criminal Procedure, is amended to read as follows:

21 (c) When the order of expunction is final, the clerk of
22 the court shall send a certified copy of the order to the Crime
23 Records Service of the Department of Public Safety and to each
24 official or agency or other governmental entity of this state or
25 of any political subdivision of this state named in [~~designated~~
26 ~~by the person who is the subject of~~] the order. The certified
27 copy of the order must be sent by secure electronic mail,
28 electronic transmission, or facsimile transmission or otherwise
29 by certified mail, return receipt requested. In sending the
30 order to a governmental entity named in the order [~~designated by~~
31 ~~the person~~], the clerk may elect to substitute hand delivery for

1 certified mail under this subsection, but the clerk must receive
2 a receipt for that hand-delivered order.

3 SECTION _____. Subsection (a), Section 5, Article 55.02,
4 Code of Criminal Procedure, is amended to read as follows:

5 (a) Except as provided by Subsections (f) and (g), on
6 receipt of the order, each official or agency or other
7 governmental entity named in the order shall:

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

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

17 (4) Renumber subsequent SECTIONS of the bill
18 appropriately.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 28, 2009

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3481 by Veasey (Relating to the right to an expunction of records and files relating to a person's arrest.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure to allow for the expunction of records and files relating to a person's arrest 180 days after the arrest if an indictment was not presented, 180 days after a felony indictment or information was dismissed or quashed, if the dismissal or quash was due to mistake, false information or other similar reason, or if the prosecutor recommends expunction before the person is tried for the offense.

The bill would also amend the Code of Criminal Procedure to require a trial court to enter an expunction order if the defendant is subsequently pardoned or a grant of certain other relief, within 30 days of receiving notice of the pardon. The order must include a list of each entity of the state believed to hold any record or file that is subject to the order, and it must request that all records and files subject to the expunction order be returned to the court. The court must retain the records and files 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.

The bill would take effect immediately if it receives a two-thirds vote of all the members in each house, otherwise it would take effect on September 1, 2009. This analysis assumes that the bill would pose no significant fiscal impact to the state.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 405 Department of Public Safety

LBB Staff: JOB, ESi, GG, MWU

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 21, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3481 by Veasey (Relating to the right to an expunction of records and files relating to a person's arrest.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure to allow for the expunction of records and files relating to a person's arrest 180 days after the arrest if an indictment was not presented, 180 days after a felony indictment or information was dismissed or quashed, if the dismissal or quash was due to mistake, false information or other similar reason, or if the prosecutor recommends expunction before the person is tried for the offense. The bill would take effect September 1, 2009. This analysis assumes that implementing the provisions of the bill would not pose a significant fiscal or operational impact to the state.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 405 Department of Public Safety

LBB Staff: JOB, ESi, GG, MWU

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 15, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3481 by Veasey (Relating to the right to an expunction of records and files relating to a person's arrest.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure to remove the requirement for the statute of limitations to run before expunging a misdemeanor arrest, by changing language that forces the statute of limitations to be tied specifically to a felony arrest. The bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house. If it does not receive the vote necessary for immediate effect, the bill would take effect September 1, 2009. The analysis assumes that implementing the provisions of the bill would not pose a significant fiscal impact to the state.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 697 Board of Pardons and Paroles

LBB Staff: JOB, ESi, GG, MWU, SDO

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 30, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3481 by Veasey (Relating to the right to an expunction of records and files relating to a person's arrest.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Code of Criminal Procedure to remove the requirement for the statute of limitations to run before expunging a misdemeanor arrest, by changing language that forces the statute of limitations to be tied specifically to a felony arrest. The bill would take effect immediately if it receives a vote of two-thirds of all members elected to each house. If it does not receive the vote necessary for immediate effect, the bill would take effect September 1, 2009. The analysis assumes that implementing the provisions of the bill would not pose a significant fiscal impact to the state.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 405 Department of Public Safety, 697 Board of Pardons and Paroles

LBB Staff: JOB, ESi, GG, MWU, SDO

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

May 20, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3481 by Veasey (Relating to the right to an expunction of records and files relating to a person's arrest.), **Committee Report 2nd House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, LM, GG, TMP

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

May 15, 2009

TO: Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3481 by Veasey (Relating to the right to an expunction of records and files relating to a person's arrest.), **As Engrossed**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, GG, TMP

LEGISLATIVE BUDGET BOARD
Austin, Texas

CRIMINAL JUSTICE IMPACT STATEMENT

81ST LEGISLATIVE REGULAR SESSION

March 30, 2009

TO: Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB3481 by Veasey (Relating to the right to an expunction of records and files relating to a person's arrest.), **As Introduced**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

Source Agencies:

LBB Staff: JOB, GG, TMP

