

BILL ANALYSIS

Senate Research Center

S.B. 462
By: West
Criminal Justice
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 462 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) and (a-1) 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) (relating to prohibiting expunction of records if the offense for which the person was acquitted arose out of a criminal episode and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode), rather than 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 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 one of the following conditions exists, rather than requiring that each of the following conditions exist:

(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 misdemeanor offense 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 arrest, and:

(a) at least 180 days have elapsed from the date of arrest if 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 one year has elapsed from the date of arrest if the arrest for which the expunction was sought was for an offense 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 arrest for which the expunction was sought was for an offense 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 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 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 (Pretrial Services), 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 of Subdivision (2)(A) relating to an indictment or information charging the person with commission of a felony that 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).

Deletes existing text of Subdivision (2)(B) relating to the person having been released and the charge, if any, having not resulted in a final conviction and is no longer pending and there having been no court ordered community supervision under Article 42.12 for any offense other than a Class C misdemeanor.

Deletes existing Subdivision (2)(C) relating to the person having not been convicted of a felony in the five years preceding the date of the arrest.

Makes nonsubstantive and conforming 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 (relating to a violation of community supervision), Article 42.12. Deletes existing text providing that, notwithstanding Subsection (a)(2)(C) (relating to a felony conviction in the preceding five years), 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 of the State of Texas under Section 2(e) (relating to filing on behalf of certain persons for an ex parte expunction), 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.

SECTION 2. 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 is authorized to proceed against the person for the offense, to provide in its expunction order, rather than order, that the law enforcement agency and the prosecuting attorney responsible for investigating the offense is authorized to retain any records and files that are necessary to the investigation.

(a-1) Requires the court to provide in its expunction order that the applicable law enforcement agency and prosecuting attorney are authorized to retain the arrest records and files of any person who becomes entitled to 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 described by Article 55.01(a)(2)(A)(i)(d).

(a-2) Creates this subsection from existing text. Makes no further changes to this subsection.

(b) Provides that unless the person who is the subject of the expunction order is again arrested for or charged with an offense arising out of the transaction for which the person was arrested or unless the court provides for the retention of records and files under Subsection (a-1) or (a-2), rather than Subsection (a) of this section, the provisions of Articles 55.03 (Effect of Expunction) and 55.04 (Violation of Expunction Order) apply to files and records retained under this section. Makes a nonsubstantive change.

SECTION 3. Provides that this Act applies to an expunction of arrest records and files for any criminal offense that occurred before, on, or after the effective date of this Act.

SECTION 4. Effective date: September 1, 2011.