

BILL ANALYSIS

C.S.S.B. 462
By: West
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There is concern that current law relating to the expunctions of certain criminal investigation and arrest records are in need of revision. C.S.S.B. 462 amends statutes relating to the expunction of certain records and files.

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

C.S.S.B. 462 amends the Code of Criminal Procedure to revise the conditions under which a person is entitled to have all records and files relating to an arrest expunged when the person has been placed under a custodial or noncustodial arrest for commission of a felony or misdemeanor and released and the charge has not resulted in a final conviction and is no longer pending and there was no court-ordered community supervision for the applicable offense, unless the offense is a Class C misdemeanor. The bill provides that the entitlement applies regardless of whether any statute of limitations exists for the offense and whether any limitations period for the offense has expired on the condition that an indictment or information has not been presented at any time following the arrest and at least 180 days have elapsed from the date of arrest if the arrest was for an offense punishable as a Class C misdemeanor; at least one year has elapsed from the date of arrest if the arrest was for an offense punishable as a Class B or A misdemeanor; at least three years have elapsed from the date of arrest if the arrest was for an offense punishable as a felony; or 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. The bill provides that the entitlement applies regardless of whether any statute of limitations exists for the offense and whether any limitations period for the offense has expired on the condition that the presented indictment or information was dismissed or quashed and the court makes certain findings. The bill removes from the conditions that must be met for such a person to be entitled to expunction the condition that the person not have been convicted of a felony in the five years preceding the date of the arrest and makes a conforming change. The bill establishes that the entitlement applies if prosecution of the person for the offense for which the person was arrested is no longer possible because the limitations period has expired.

C.S.S.B. 462 prohibits a person from expunging records and files relating to an arrest that occurs pursuant to a warrant issued for a violation of a condition of community supervision. The bill specifies that a person who intentionally or knowingly absconds from the jurisdiction after being released on bail following an arrest is not eligible for an expunction where such eligibility is based on the expiration of the applicable statute of limitations or the fact that a certain period has elapsed since arrest without the presentment of a charging document.

C.S.S.B. 462 requires a court, in an expunction order for a person 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 may proceed against the person for the offense, to provide 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 an expunction of those records and files based on the expiration of a period under the bill's provisions, but without the certification of the prosecuting attorney under the bill's provisions. The bill makes conforming and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 462 differs from the original by creating tiers for the periods that must elapse before a certain arrested and released person against whom an indictment or information has not been presented may be entitled to expunction of all arrest records and files ranging from 180 days to three years based on the category of offense for which the person was arrested, whereas the original establishes a consistent period of two years that must elapse in order for such a person to be so entitled.

C.S.S.B. 462 differs from the original by requiring a court to provide in a certain expunction order for the retention by certain law enforcement agencies and attorneys of arrest records and files relating to certain persons who are entitled to an expunction based on a certain period elapsing under the bill's provisions, whereas the original authorizes a court to provide for such retention in the expunction order. The substitute differs from the original by making the bill effective September 1, 2011, whereas the original makes the bill effective on passage, or, if the bill does not receive the necessary vote, September 1, 2011. The substitute differs from the original in nonsubstantive ways.