

BILL ANALYSIS

C.S.H.B. 670
By: Canales
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that too often a person placed on deferred adjudication community supervision for certain criminal offenses will believe incorrectly that the person's criminal record will be fully expunged. C.S.H.B. 670 seeks to provide a method by which certain such persons may remove the stigma associated with the person's past arrest.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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.H.B. 670 amends the Code of Criminal Procedure to entitle a person who has been placed under a custodial or noncustodial arrest for a misdemeanor offense other than an offense involving disorderly conduct, public indecency, prohibited weapons, organized crime or an offense against the person to have all records and files related to the arrest expunged if the person was placed on deferred adjudication community supervision for the misdemeanor offense and subsequently received a discharge and dismissal; if the person was not required to register as a sex offender as a condition of or as a result of the person's placement on deferred adjudication community supervision; if the person has not been convicted of or placed on deferred adjudication community supervision for a Class B misdemeanor, Class A misdemeanor, or felony committed after the date of the misdemeanor offense for which the person was placed on deferred adjudication community supervision; if there are no charges pending against the person for the commission of any offense, other than a fine-only offense; and if a period of not less than five years has passed since the date on which the person received the discharge and dismissal. The bill requires the person to submit an ex parte petition for expunction to the court that placed the person on deferred adjudication community supervision and requires the petition to be verified and to contain certain information about the petitioner and the petitioner's offense and a statement that the person was not required to register as a sex offender as a condition of or as a result of the person's placement on deferred adjudication community supervision by the court, the person has not been convicted of or placed on deferred adjudication community supervision for a Class B misdemeanor, Class A misdemeanor, or felony committed after the date of the misdemeanor offense for which the person was placed on deferred adjudication community supervision, and there are no charges pending against the person for the commission of any offense, other than a fine-only offense. The bill requires a court that finds that the petitioner is entitled to expunction of any arrest records and files that are the subject of the petition to enter an order directing expunction in a manner consistent with the procedures for the expunction of the

records of a defendant convicted and subsequently granted relief or pardoned on the basis of actual innocence. The bill extends the right of a close relative to seek expunction on behalf of a deceased person to a close relative of a deceased person entitled to an expunction under the bill's provisions. The bill requires the fees relating to an expunction proceeding to be waived if the petitioner is entitled to expunction and the court finds that the petitioner is indigent.

C.S.H.B. 670 amends the Business & Commerce Code to extend the applicability of a prohibition against the publication of certain criminal record information by a business entity to criminal record information with respect to which an order of expunction has been issued under the bill's provisions.

C.S.H.B. 670 amends the Government Code to extend the applicability of prohibitions against the compilation and dissemination of certain criminal history record information by a private entity that compiles and disseminates such information for compensation to criminal history record information with respect to which an order of expunction has been issued under the bill's provisions. The bill authorizes a person to petition for the expunction of a DNA record if the person is entitled under the bill's provisions to the expunction of records relating to the offense to which the DNA record is related.

C.S.H.B. 670 applies to an expunction of arrest records and files relating to any misdemeanor offense that occurred before, on, or after the bill's effective date.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 670 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 55, Code of Criminal Procedure, is amended by adding Article 55.012 to read as follows:

Art. 55.012. EXPUNCTION OF CERTAIN NONVIOLENT MISDEMEANOR OFFENSES. (a) A person who has been placed under a custodial or noncustodial arrest for a misdemeanor offense other than a misdemeanor offense under Title 5, Penal Code, is entitled to have all records and files related to the arrest expunged if:

(1) the person was placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, for the misdemeanor offense and subsequently received a discharge and dismissal under Article 42A.111;

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 55, Code of Criminal Procedure, is amended by adding Article 55.012 to read as follows:

Art. 55.012. EXPUNCTION OF CERTAIN NONVIOLENT MISDEMEANOR OFFENSES. (a) A person who has been placed under a custodial or noncustodial arrest for a misdemeanor offense other than a misdemeanor offense under Chapter 42, 43, 46, or 71, Penal Code, or Title 5, Penal Code, is entitled to have all records and files related to the arrest expunged if:

(1) the person was placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, for the misdemeanor offense and subsequently received a discharge and dismissal under Article 42A.111;

(2) the person was not required to register

(2) the person has not been arrested for the commission of any Class B misdemeanor, Class A misdemeanor, or felony committed after the date of the misdemeanor offense for which the person was placed on deferred adjudication community supervision; and

(3) a period of not less than five years has passed since the date on which the person received the discharge and dismissal described by Subdivision (1).

(b) The person must submit an ex parte petition for expunction to the court that granted the deferred adjudication community supervision. The petition must be verified and must contain:

(1) the information described by Section 2(b), Article 55.02; and

(2) a statement that the person has not been arrested for the commission of any Class B misdemeanor, Class A misdemeanor, or felony committed after the date of the misdemeanor offense for which the person was placed on deferred adjudication community supervision.

(c) If the court finds that the petitioner is entitled to expunction of any arrest records and files that are the subject of the petition, the court shall enter an order directing expunction in a manner consistent with the procedures described by Section 1a, Article 55.02.

as a sex offender under Chapter 62 as a condition of or as a result of the person's placement on deferred adjudication community supervision as described by Subdivision (1);

(3) the person has not been convicted of or placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, for a Class B misdemeanor, Class A misdemeanor, or felony committed after the date of the misdemeanor offense for which the person was placed on deferred adjudication community supervision;

(4) there are no charges pending against the person for the commission of any offense, other than an offense punishable by fine only; and

(5) a period of not less than five years has passed since the date on which the person received the discharge and dismissal described by Subdivision (1).

(b) The person must submit an ex parte petition for expunction to the court that placed the person on deferred adjudication community supervision. The petition must be verified and must contain:

(1) the information described by Section 2(b), Article 55.02; and

(2) a statement that:

(A) the person was not required to register as a sex offender under Chapter 62 as a condition of or as a result of the person's placement on deferred adjudication community supervision by the court;

(B) the person has not been convicted of or placed on deferred adjudication community supervision under Subchapter C, Chapter 42A, for a Class B misdemeanor, Class A misdemeanor, or felony committed after the date of the misdemeanor offense for which the person was placed on deferred adjudication community supervision; and

(C) there are no charges pending against the person for the commission of any offense, other than an offense punishable by fine only.

(c) If the court finds that the petitioner is entitled to expunction of any arrest records and files that are the subject of the petition, the court shall enter an order directing expunction in a manner consistent with the procedures described by Section 1a, Article 55.02.

SECTION 2. Section 109.005(a), Business & Commerce Code, is amended.

SECTION 2. Same as introduced version.

SECTION 3. Article 55.011(b), Code of Criminal Procedure, is amended.

SECTION 3. Same as introduced version.

No equivalent provision.

SECTION 4. Article 102.006(b), Code of Criminal Procedure, is amended to read as follows:

(b) The fees under Subsection (a) shall be waived if:

~~[(1)]~~ the petitioner;

(1) seeks expunction of a criminal record that relates to an arrest for an offense of which the person was acquitted, other than an acquittal for an offense described by Article 55.01(c), [;] and

~~[(2)]~~ the petition for expunction is filed not later than the 30th day after the date of the acquittal; or

(2) is entitled to expunction under Chapter 55, and the court finds that the petitioner is indigent.

SECTION 4. Section 411.0835, Government Code, is amended.

SECTION 5. Same as introduced version.

SECTION 5. Section 411.0851(a), Government Code, is amended.

SECTION 6. Same as introduced version.

SECTION 6. Section 411.151(b), Government Code, is amended.

SECTION 7. Same as introduced version.

SECTION 7. Section 552.1425(a), Government Code, is amended.

SECTION 8. Same as introduced version.

SECTION 8. This Act applies to an expunction of records and files relating to any misdemeanor offense that occurred before, on, or after the effective date of this Act.

SECTION 9. This Act applies to an expunction of **arrest** records and files relating to any misdemeanor offense that occurred before, on, or after the effective date of this Act.

SECTION 9. This Act takes effect September 1, 2017.

SECTION 10. Same as introduced version.