

BILL ANALYSIS

C.S.H.B. 859
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under current law, misdemeanor records remain on an individual's record even if the offense has been decriminalized by the legislature. In these cases, the decriminalization of the offense may not be known to those who have access to the individual's record, such as potential employers, and may negatively impact individuals who have already reentered society successfully. It has been argued that this may continue to be an issue for individuals in light of marijuana decriminalization efforts, which have intensified both in Texas and across the country. C.S.H.B. 859 seeks to address this issue by creating a framework by which those who were charged with misdemeanors that have been decriminalized may expunge their records of those offenses.

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. 859 amends the Code of Criminal Procedure to entitle a person who has been placed under a custodial or noncustodial arrest for a misdemeanor offense to the expunction of all records and files related to the arrest, including any records and files related to a conviction of the offense, if the following conditions are met:

- the conduct that was the subject of the offense has been statutorily decriminalized subsequent to the date of the commission of the offense;
- with regard to a person who is convicted of the offense, the person's sentence, including any term of confinement or period of community supervision imposed and payment of all fines and costs imposed, is finally discharged; and
- with regard to a person who is placed on deferred adjudication community supervision for the offense, the person received a dismissal and discharge on expiration of a period of deferred adjudication community supervision for the offense.

C.S.H.B. 859 provides the following with respect to such expunction and to records and files relating to the arrest for the offense:

- the person seeking the expunction must submit an ex parte petition for expunction to the court that convicted the person or placed the person on deferred adjudication community supervision;
- the petition must satisfy statutory requirements relating to ex parte petitions for expunction of criminal records and files;

- the court at a hearing held on such a petition may require the petitioner to demonstrate that the applicable offense qualifies as a statutorily decriminalized offense under current law;
- if the court finds that the petitioner is entitled to the expunction of the records and files, the court must enter an expunction order;
- an applicable law enforcement agency, the prosecuting attorney responsible for investigating the offense, and the clerk of the court may retain such records and files only for the investigation or prosecution of another offense arising out of the same transaction for which the person was arrested or for use by the office of the governor in determining whether to issue a pardon or commute a sentence; and
- such records and files are open only for inspection for such purposes or for inspection by the person who is the subject of the order.

C.S.H.B. 859 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 waiver of expunction proceeding fees for a petitioner who is entitled to expunction under the bill's provisions.

C.S.H.B. 859 amends the Business & Commerce Code to extend the applicability of the prohibition against a business publishing criminal record information to an expunction under the bill's provisions.

C.S.H.B. 859 amends the Government Code to extend the applicability of the following statutory provisions to an expunction under the bill's provisions:

- the prohibition against the dissemination of related criminal history record information by private entities that compile and disseminate such information for compensation;
- the prohibition against the Department of Public Safety's dissemination of criminal history record information to a private entity that has committed multiple violations of that prohibition;
- the duty of a private entity to destroy such information as it relates to an expunction under the bill's provisions; and
- the authorization to petition for the expunction of a DNA record to a person entitled under the bill's provisions.

C.S.H.B. 859 applies to an expunction of arrest records and files relating to any misdemeanor offense that was committed before, on, or after the bill's effective date.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 859 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a clarification not in the original that the decriminalization of conduct subsequent to the date of the commission of the offense for which a person is entitled to expunction of arrest records and files under the bill is statutory decriminalization.