

Expanding circumstances for expunction of criminal records

HB 3481 by Veasey (Harris)

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DIGEST:

HB 3481 would have expanded the circumstances under which persons were entitled to have their criminal records expunged, including: if someone had been convicted and subsequently granted relief because of actual innocence; if charges had not been filed before the application for an expunction and it was at least 180 days after an arrest for a felony or a misdemeanor; or, if felony charges had been filed and then dismissed for certain specified reasons before the application for an expunction and it was at least 180 days after the dismissal. The bill would have eliminated a requirement that the statute of limitations have expired for some expunctions in which indictments charging persons with a crime had not been presented or had been presented and dismissed and quashed because of mistake, false information, or other reasons indicating absence of probable cause. It would have eliminated a requirement that persons not have been convicted of a felony in the five years preceding the arrest date and would have deleted language that permitted certain class C misdemeanor offenses for which the defendant received deferred adjudication to be expunged.

The bill would have expanded the circumstances under which a person was eligible to have criminal records expunged after being tried, convicted, and acquitted by the Court of Criminal Appeals to include acquittals by intermediate courts of appeals if the period for granting a petition for discretionary review had expired. The bill would have permitted an expunction to be granted any time a prosecutor with jurisdiction over a case recommended an expunction before a person had been tried.

HB 3481 also would have established a process for the automatic expunction of criminal records for persons who were pardoned or who were granted relief on the basis of actual innocence.

GOVERNOR'S REASON FOR VETO:

“House Bill No. 3481 would authorize the expunction of criminal records, including law enforcement case files, 180 days after an arrest if no formal misdemeanor or felony charges have been filed. Current statutory provisions require that the statute of limitations for the particular offense, usually at least two years, expire before criminal records may be destroyed, including in cases involving misdemeanor offenses. Current law provides that an individual is entitled to copies of their expunged records after the statute of limitations has expired. A prosecutor may contest the expunction by proving reasonable cause that the person will be charged, leading the prosecutor to reveal details of the investigation prior to its completion. Expunction statutes should not be used as a means of discovery or as a means to force a prosecutor to rush to file formal charges prematurely. Allowing a person to know the identities of witnesses or the nature of their evidence unnecessarily endangers both law enforcement and citizen witnesses prior to an indictment for

murder, organized crime, sexual assaults and other serious offenses. House Bill No. 3481 precipitates an untenable injustice to victims and a hazard to public safety.”

RESPONSE:

Rep. Marc Veasey, the bill’s author, said, “This past Friday [June 19], Governor Perry chose to veto House Bill 3481, a bill I authored, and along with a conservative Republican state senator from the Metroplex. If signed by the governor, HB 3481 would have improved innocent Texans’ ability expunge their criminal records. Expunctions of criminal records are a vital part of our criminal justice system. Without them, people who are mistakenly charged with a crime may have their lives permanently disrupted when their wrongful arrests are reflected on their criminal records as checked by potential employers, housing authorities, and others.

“Governor Perry’s veto of HB 3481 came as a tremendous surprise to me, as the bill was negotiated and agreed to by both criminal defense attorneys and prosecutors. HB 3481 was not a controversial or partisan bill — it passed unanimously in both the Senate and the House of Representatives.

“Governor Perry claims that he was compelled to veto HB 3481 because the bill ‘precipitates an untenable injustice to victims and a hazard to public safety.’ That statement is not supported by the facts. I authored HB 3481 with the understanding that I wanted to improve the expunction statute, but only if I could do so in a way that was acceptable to both defense attorneys and prosecutors. After much negotiation and compromise, we were able to create a bill that all parties agreed would allow for expunctions when justice demands, while protecting the ability of our prosecutors to get criminals off our streets.

“If Governor Perry had not vetoed HB 3481, we would have improved access to justice, while maintaining safeguards to allow prosecutors to do their jobs. Without these safeguards, we could never have received the support of law enforcement that we did — including support from Tarrant County, Harris County, and the Texas District & County Attorneys Association.

“Governor Perry claims to be protecting law enforcement’s ability to investigate and prosecute crime. But when he makes that claim in order to veto a bill that has the full support of prosecutors, Governor Perry protects only his re-election bid in the Republican Primary, at the expense of Texas, its citizens, and its justice system.”

Sen. Chris Harris, the Senate sponsor, had no comment.

NOTES:

The HRO analysis of HB 3481 appeared in Part Two of the May 4 *Daily Floor Report*.