

SUBJECT: Allowing expunction of arrest records when an indictment is quashed

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 7 ayes — Hinojosa, Talton, Garcia, Green, Kitchen, Martinez Fischer,
Shields

0 nays

2 absent — Dunnam, Keel

WITNESSES: For — *Registered, but did not testify*: Keith Hampton, Texas Criminal Defense Lawyers Association; Chuck Noll, Harris County District Attorney's Office; Don Loucks; Frank C. Eikenburg

Against — *Registered, but did not testify*: Doug Toney, Texas Daily Newspaper Association, Texas Press Association

BACKGROUND: Code of Criminal Procedure, art. 55.01 allows expunction of arrest records for persons whose indictments or information charging them with commission of a felony are dismissed, if *all* of the following conditions are met:

- ! the court finds that the indictment was dismissed because it was void or because the presentment of the indictment had been made because of mistake, false information, or other similar reason indicating absence of probable cause to believe at the time of dismissal that the person committed the offense;
- ! the person is released and the charge is no longer pending, does not result in a final conviction, and a court does not order the defendant under community supervision; and
- ! the person has not been convicted of a felony in the five years preceding the date of the arrest.

The limitations period is the time period from the date an offense is committed within which an indictment can be presented. Commonly known as the "statute of limitations," this period can range from three to 10 years, depending on the felony offense. There is no statute of limitations on indictment for murder or manslaughter.

Code of Criminal Procedure, art. 55.02 provides the procedure for expunction.

DIGEST: HB 1323 would amend Code of Criminal Procedure, art. 55.01(a) to revise the conditions for expunging arrest records. In addition to the current requirements, it would allow a person's arrest records to be expunged if the indictment or information charging the person with a felony was dismissed or quashed and:

- ! the limitations period expired before the date on which the person filed a request for expunction under Article 55.02; *or*
- ! the court found that the indictment or information was dismissed or quashed because it was void or because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause to believe at the time of dismissal that the person committed the offense.

HB 1323 would apply to arrest records and files created before, on, or after the effective date, which would be August 27, the 91st day after the final day of the session.

SUPPORTERS SAY: HB 1323 would clear up a technicality in the Penal Code about when people are entitled to have their arrest records expunged. Under current law, an arrest record may be expunged when an indictment is dismissed. However, if a judge makes the decision to quash (or throw out) an indictment because something in the indictment procedure is done improperly, the law does not allow the arrest record to be expunged – even if the indictment is never resubmitted to a grand jury, the person is never prosecuted, and the statute of limitations on prosecuting the crime runs out. HB 1323 would extend the same right of arrest records expunction to people whose indictments are quashed as to those whose indictments are dismissed.

HB 1323 would provide several safeguards against expunging the arrest records of potentially guilty defendants. First, the arrest records would be expunged only if the statute of limitations on the offense had run out or if the indictment or presentment had been made because of a mistake, false information, or some other reason that showed probable cause that the person did not commit the offense. Second, the person would have to have been released from custody, the charge could not have resulted in a final

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conviction or be pending, and a court could not have ordered the defendant to serve community supervision. Finally, the person could not have been convicted of a felony in the five years preceding the date of the person's arrest. Only under these limited circumstances could an arrest record be expunged.

**OPPONENTS
SAY:**

HB 1323 would limit the public's right to access arrest records. Indictments often are quashed for technical reasons. Guilty persons could have their indictments quashed on a technicality and have their arrest records expunged once the statute of limitations for the offense ran out, regardless of whether there was probable cause that the person committed the offense. If that person's arrest record later were expunged, potential employers, police officers, and other interested parties would have no way of knowing that the person previously had been arrested and charged with a felony.

NOTES:

The companion bill, SB 1608 by Staples, is pending in the Senate Criminal Justice Committee following a public hearing on April 4.

In the 76th Legislature, a similar bill, HB 1791 by Shields, was referred to the House Criminal Jurisprudence Committee, but died there. In the 75th Legislature, a similar bill, HB 2969 by Shields, was reported favorably by the House Criminal Jurisprudence Committee, but died in the House Calendars Committee.