

**SUBJECT:** Expunction of innocent person's records whose identity is stolen

**COMMITTEE:** Criminal Jurisprudence — favorable, with amendment

**VOTE:** 8 ayes — Hinojosa, Dunnam, Keel, Talton, Garcia, Kitchen, Martinez  
Fischer, Shields

0 nays

1 absent — Green

**SENATE VOTE:** On final passage, April 20 — 28-0

**WITNESSES:** (*On companion bill, HB 2256:*)  
For — Rick Lannoye, American Civil Liberties Union; Greg Martin on behalf  
of Kelly Marie Martin

Against — None

On — *Registered but did not testify:* Louis Beaty, Texas Department of  
Public Safety

**BACKGROUND:** Code of Criminal Procedure, art. 55 outlines conditions for the expunction of  
criminal records. People who have been arrested are entitled to have all  
records and files related to the arrest expunged if:

- ! they are tried for the offense and acquitted and have not been  
convicted of a felony in the five years preceding the date of the arrest;
- ! they are tried for the offense, convicted, and subsequently pardoned;
- ! no indictment is presented for the offense for which they were  
arrested, the indictment is void, or it is dismissed because of a  
mistake, false information, or other reason indicating an absence of  
probable cause that they committed the crime, and they are released  
and not convicted, the charges are no longer pending, no supervision  
was ordered by the court, and they have not been convicted of a  
felony in the five years preceding the date of the arrest; or

- ! they are tried, convicted, then exonerated by the Court of Criminal Appeals, and they have not been convicted of a felony in the five years preceding the date of the arrest.

The arrest record cannot be expunged if a person is charged with a group of crimes committed in one episode, and charges for at least one of those crimes are still pending.

Government Code, sec. 411.0421 requires the Texas Department of Public Safety to create a record of persons who sign a declaration that their identities have been used fraudulently by another person.

DIGEST:

SB 1047 would entitle a person to have any information identifying the person, including name, address, date of birth, driver's license number, and social security number, expunged from records and files relating to the arrest of another person if:

- ! the information identifying the person seeking the expunction was falsely given by the person arrested as that person's identifying information without the permission of the person seeking expunction; and
- ! the only reason the information identifying the person seeking expunction was contained in the arrest records and files was that it was falsely given by the person arrested as his or her identifying information.

The bill would allow the person seeking expunction to file a petition for expunction in a district court for the county in which the person who falsely identified himself or herself as the petitioner was arrested. The petition would have to include identifying information of the person seeking expunction, the offense charged against the person who falsely identified him or herself, the date that person was arrested, the name of the county where that person was arrested, and the name of the agency that arrested that person, in addition to other application requirements defined in current law. The verified petition also would have to include authenticated fingerprint records of the petitioner and either the full name of the person arrested and a statement that the petitioner was not the person arrested and did not give the arrested person permission to falsely identify himself or herself or a

statement explaining why that information was not included.

When an official, agency, or other entity named in an expunction order received an order from the district court granting expunction to a person who was entitled to one because someone else falsely used their identifying information, that official, agency, or entity would have to:

- ! obliterate all portions of the record or file identifying the petitioner;
- ! substitute for all obliterated portions of the record or file any available information identifying the person arrested; and
- ! not return the record or file, or delete index references to the record or file.

The bill would make the record created under Government Code, sec. 411.0421 available on-line to any entity authorized to receive information under the Criminal History Record Information Act.

SB 1047 would apply to arrest records and files created before, on, or after its effective date. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2001.

SUPPORTERS  
SAY:

SB 1047 is necessary to protect innocent people whose identities were used fraudulently by others who committed crimes. It can be very difficult for a persons to restore their good name in credit reports and government records. Recently, a Texas college student discovered that she had a lengthy arrest record, including charges of prostitution and public lewdness, because a Dallas woman had stolen her identity. Although the district attorney's office and police acknowledged that the college student was implicated falsely in these crimes and dropped all charges, her three-page-long record cannot be expunged because she never has been arrested.

This bill would contain safeguards to ensure that expunction was granted only to those whom this bill was intended to cover. The expunction could be granted only if the identifying information were given falsely by the person arrested as that person's identifying information without the consent of the victim *and* the only reason the victim's identifying information appeared in the arrest record was because the criminal falsely provided it.

If SB 1047 allowed law enforcement to keep a record of an innocent person's name in connection with a criminal act, the bill's purpose would be defeated. Open records issues still could allow the public to see those records, and the innocent person still would appear to have an arrest record any time a law enforcement officer ran a background check. Having to possess a special password or documentation to show they have not been arrested is unfair to innocent persons.

OPPONENTS  
SAY:

This bill would create problems for law enforcement. If records connecting criminal Doe with his alias of innocent citizen Smith were expunged, Doe would be free to continue claiming he was Smith in subsequent arrests because there would be no record that he was lying. In addition, the innocent person often is someone the criminal knows, and maintaining a record of that innocent person's name can be crucial in locating a criminal to make sure the criminal is brought to justice. Perhaps the bill could allow law enforcement to maintain a record that would be closed from public view and could give the innocent person a code word to use in the event that he were pulled over for a traffic violation by a peace officer who subsequently discovered his arrest record.

NOTES:

The Senate-passed version of the bill would require a verified petition for expunction on the basis of fraudulent identification to include the following information or a statement explaining the reason the following was not included:

- ! the full name of the person arrested;
- ! a statement that the petitioner was not the person arrested and for whom the arrest records and files were created, and the petitioner did not give the person arrested consent to identify him or herself falsely as the petitioner; and
- ! authenticated fingerprint records of the petitioner.