

SUBJECT: Automatic expunction of arrest records when defendant is acquitted

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Hinojosa, Keel, Talton, Garcia, Kitchen, Martinez Fischer
0 nays
3 absent — Dunnam, Green, Shields

SENATE VOTE: On final passage, April 20 — 30-0, on Local and Uncontested Calendar

WITNESSES: For — *Registered but did not testify*: William Harrell, American Civil Liberties Union, National Association for the Advancement of Colored People; League of United Latin American Citizens
Against — None

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.

Code of Criminal Procedure, art. 55.02 provides the procedure for expunction. If the defendant was acquitted at trial and does not have a felony conviction in the five years preceding the arrest, the trial court presiding over the case must enter an order of expunction at the defendant's request after

holding a hearing and notifying the state. The court must enter the order of expunction not later than the 30th day after the date of the acquittal. When a defendant is acquitted of a crime, the court must advise the defendant of his or her right to expunction. The defendant must provide to the court:

- ! the defendant's full name, sex, race, date of birth, driver's license number, social security number, and address at the time of the arrest;
- ! the offense charged against the defendant;
- ! the date that offense was alleged to have been committed;
- ! the name of the arresting agency;
- ! the name of the county in which the arrest occurred and the municipality, if any, in which the arrest occurred;
- ! the case number and court of offense; and
- ! a list of all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other federal, state, or local officials or agencies that the petitioner has reason to believe have records or files subject to expunction.

Persons who are entitled to expunction after being convicted and subsequently pardoned or acquitted by an appeals court or after having their indictments voided, not presented, or dismissed and who have no final conviction or court-ordered community supervision or felony convictions in the five years preceding arrest can file a petition for expunction in the county in which they were arrested or where the offense was alleged to have occurred. The petition must include the information described above. The court must set a hearing on the matter no sooner than 30 days from the filing of the petition and must give reasonable notice of the hearing to each official, agency, or other entity named in the petition. If the court finds that the petitioner is entitled to expunction of any records and files subject to the petition, it must enter an order directing expunction.

DIGEST:

CSSB 1570 would amend Code of Criminal Procedure, art. 55.02 to require the law enforcement agency that arrested the defendant to provide to the court the information listed above when a defendant was acquitted and entitled to expunction. The defendant no longer would have to request an expunction hearing for the court to enter an order of expunction. The law enforcement agency that arrested the defendant would have to pay any costs

associated with providing the court the information and any other action necessary to obtain the expunction. The defendant and defense counsel would not have to assist the court clerk in preparing copies of the expunction order for delivery or take any other action necessary to obtain the expunction.

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. The bill would apply to any person acquitted of an offense on or after the effective date, regardless of when the alleged offense occurred.

**SUPPORTERS
SAY:**

When defendants are acquitted of a crime, they should not be further victimized by having to apply to have their records expunged. Under current law, an acquitted person has to file a petition for an expunction hearing, pay court costs related to the petition and hearing of \$175 to \$200, and hire an attorney to process the expunction at an additional cost of \$500 to \$1,000. This bill would reduce the financial burden on the defendant – as well as on the state – by eliminating the hearing process and making expunction automatic for defendants acquitted of a crime.

SB 1570 would shift the onus of submitting necessary forms and providing payment for the expunction process from a defendant acquitted of a crime to the arresting law enforcement agency. Since the mistake of arresting an innocent person was made by a government agency, that agency, rather than the defendant, should bear the cost of fixing that mistake. In addition, the arresting agency is more likely than the defendant to have the necessary information for expunction. The agency collects personal information at the time of arrest and is in a better situation than an innocent citizen to know what other agencies would have a record of the arrest.

**OPPONENTS
SAY:**

This bill could hurt defendants who sought expunction after an acquittal. Currently, a defendant submits all personal information and information about the alleged offense and about any agencies that would have a record of the arrest or offense to the acquitting court. The defendant is the person best informed about his or her past and is the one most likely to know all of this information. If this bill were enacted, the arresting agency would be responsible for compiling the necessary information. In many cases, this

information is not readily available to that agency. Other agencies and the prosecutor's office may have been involved in the investigation of the offense, and years may have elapsed between the arrest and the trial. The information submitted could be incorrect or incomplete, meaning that some of the defendant's records would not be expunged.

SB 1570 unnecessarily would transfer the cost of preparing an expunction from the acquitting court to the arresting agency. When an expunction order is entered after an acquittal, the court clerk takes care of necessary paperwork at no cost to the defendant. The defendant only submits information to ensure that the expunction order goes to all relevant agencies. This bill would transfer costs needlessly between two local government entities.

NOTES:

The Senate engrossed version would have allowed any person entitled to expunction of records and files to file a petition for expunction in a district court for the county in which the person was arrested or in the county where the offense was alleged to have occurred. Currently, all persons eligible for an expunction except those acquitted of the crime are eligible to file that petition. This bill would have included persons acquitted of a crime.