

SUBJECT: Ex parte petitions for the expunction of criminal records and files

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 9 ayes — Keel, Riddle, Pena, Denny, Escobar, Hodge, P. Moreno,  
Raymond, Reyna

0 nays

WITNESSES: For — None

Against — None

On — Louis Beaty, Texas Department of Public Safety.

BACKGROUND: Code of Criminal Procedure, art. 55, governs the expunction of criminal records. A person who has been arrested for the commission of either a misdemeanor or a felony is entitled to have all records and files related to the arrest deleted in certain situations, including when the indictment or information has not been presented or has been dismissed. In certain circumstances, an individual would not be entitled to an expunction if that person had a felony conviction in the five years prior to arrest.

Under Article 55.02 of the Code of Criminal Procedure, a person entitled to expunction may file an ex parte petition in a district court. The court must wait 30 days from the filing date to set a hearing and give reasonable notice of the hearing to those named in the petition.

The petition must be verified and include the following, or an explanation why one or more of the following is not included:

- the person's name, sex, race, date of birth, driver's license number, social security number, and address at the time of arrest;
- the offense charged against the person;
- the date the offense is alleged to have been committed;
- the name of the county or municipality where the person was arrested;
- the name of the agency that arrested the person;
- the case number and court of offense; and

- a list of all federal or state entities that the person believes has records or files entitled to expunction.

DIGEST:

HB 3093 would amend the Code of Criminal Procedure, art. 55, to allow the Department of Public Safety to file an ex parte petition for expunction on behalf of someone entitled to expunction. The petition would have to meet the requirements outlined in of the Code of Criminal Procedure, art. 55.02.

If the person had a felony conviction in the five years preceding arrest, the person would still be entitled to an expunction if it were filed by DPS.

The bill would take effect on September 1, 2005.

SUPPORTERS  
SAY:

HB 3093 would allow the DPS to file an ex parte petition for expunction on behalf of individuals wrongly accused of driving with a suspended license.

When an individual's driver's license is suspended, a Department of Public Safety clerk enters that person's information, including the driver's license number, manually into a computer. On rare occasions, a clerk will inadvertently transpose the driver's license numbers, which could result in an innocent driver being arrested for driving with a suspended license. When this happens, the person usually is released from jail within a few hours but the individual's arrest record still exists. Allowing DPS to file the petition for expunction would save the innocent individuals the time and expense of hiring a lawyer to clear their records.

DPS could not misuse their authority to expunge DPS employees' criminal records. In order to have one's record expunged, individuals would first have to qualify for expunction under the law.

OPPONENTS  
SAY:

The bill, if enacted, could potentially enable DPS to take advantage of the law by expunging their own employees' criminal records.