

- SUBJECT:** Expunction of criminal records for certain decriminalized misdemeanors
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 9 ayes — Collier, K. Bell, Cason, Cook, Crockett, Hinojosa, A. Johnson, Murr, Vasut
- 0 nays
- WITNESSES:** For — (*Registered, but did not testify:* Terra Tucker, Alliance for Safety and Justice and Texas Clean Slate Coalition; Nick Hudson, American Civil Liberties Union of Texas; Brian Middleton, Fort Bend County District Attorney’s Office; Traci Berry, Goodwill Central Texas; Kathy Mitchell, Just Liberty; Laura Nodolf, Midland County District Attorney's Office; Greg Hansch, National Alliance on Mental Illness Texas; Chris Harris, Texas Appleseed; Lori Henning, Texas Association of Goodwills; Rachana Chhin, Texas Catholic Conference; Shea Place, Texas Criminal Defense Lawyers Association; Douglas Smith, Texas Criminal Justice Coalition; Emily Gerrick, Texas Fair Defense Project; Julie Wheeler, Travis County Commissioners Court; Thomas Parkinson)
- Against — None
- DIGEST:** CSHB 859 would entitle an individual to have certain decriminalized misdemeanors expunged from the individual's criminal record. The bill would apply to records and files related to an arrest, including records and files related to a conviction of the offense, if:
- the person was convicted of or placed on deferred adjudication community supervision for the offense;
 - the arrest was for a misdemeanor offense and the conduct that was the subject of the offense had been statutorily decriminalized subsequent to the date of the commission of the offense; and
 - the person's sentence, including a confinement or community supervision term and payment of all fines and costs, was finally discharged or the person received a discharge and dismissal after

completing a term of deferred adjudication.

The person would have to submit to the court a petition for expunction. The petition would have to be verified and contain certain identifying information currently required for expunction petitions. At a hearing held on a petition, courts could require the petitioner to demonstrate that the offense qualified as a statutorily decriminalized offense, including through an affidavit signed by the petitioner.

If the court found that the petitioner was entitled to expunction of the records and files, the court would be required to order the expunction in a manner consistent with current expunction procedures.

The law enforcement agency, the prosecutor who investigated the offense, and the court clerk could retain records and files relating to the arrest, including any records and files related to a conviction of the offense, to be used only:

- to investigate or prosecute another offense arising out of the same transaction for which the person was arrested; or
- by the governor in deciding whether to issue a pardon or commute a sentence.

The records and files for which an order of expunction had been issued would not be open for inspection by anyone except for the person who was the subject of them. Fees for the expunction would have to be waived if the person asking for the expunction was entitled to one under the bill.

The bill would take effect September 1, 2021, and would apply to an expunction of arrest records and files for misdemeanors committed before, on, or after that date.

**SUPPORTERS
SAY:**

CSHB 859 would ensure fair treatment of individuals convicted of minor crimes if Texas law changed and actions that resulted in their criminal record were no longer a crime. Currently, even if an offense is removed from the statutes and no longer a crime, those arrested or convicted of the

offense would continue to have a criminal record. This is unfair and could saddle such individuals with the negative effects that even a minor offense can have on employment, housing, schooling, and more.

The bill would address this problem by establishing a pathway for these individuals to have their records expunged. It would apply only to misdemeanors and only in cases in which the individual had met all the requirements of the court and fully discharged their sentence. CSHB 859 would be in line with efforts to help individuals move on from a minor brush with the law, and such efforts are even more important if that brush was for doing something that is no longer a crime.

Law enforcement officials, prosecutors, and courts would be allowed limited access to the information, but it would be have to be for offenses that arose from the same transaction because that is when the records potentially would be relevant.

The expunction allowed by the bill would be properly limited to offenses removed from statute, which ensures that it is a legislative decision, not action by a court, that permits the expunction.

**CRITICS
SAY:**

CSHB 859 would contain provisions for law enforcement, prosecutors, and courts to retain the records expunged under the bill, but it could be too limiting on when those records could be used. Such authorities could only use the records in relation to other offenses arising out of the same transaction, which could deny these authorities the use of information typically available in a criminal record.

The bill also could create confusion over which circumstances qualified under the term "statutorily decriminalized." For example, it is unclear if it would include a situation in which elements of a crime were moved into another statute and the original statute repealed.