

## **BILL ANALYSIS**

Senate Research Center  
79R7218 RMB-F

H.B. 3093  
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Criminal Justice  
5/19/2005  
Engrossed

### **AUTHOR'S/SPONSOR'S STATEMENT OF INTENT**

Occasionally, through human error, incorrect information is entered on a driver record resulting in suspension action against an individual. The Department of Public Safety (DPS) identifies most of these errors through standard exception processing procedures. However, in limited circumstances, the error is not identified or corrected in a timely manner and the driver is subsequently arrested for the offense of driving while a license is invalid.

When the driver notifies DPS that such an event has occurred, the individual's driver record is immediately corrected and the local prosecutor is notified of the error. Although the criminal charges are dismissed, the driver still has an arrest record related to the incident. Chapter 55 (Expunction of Criminal Records) of the Code of Criminal Procedure allows a person placed under a custodial or noncustodial arrest to file an ex parte petition for expunction, which usually requires the driver to hire an attorney to petition the court for expunction of the records and then seek reimbursement from DPS to cover the expenses.

In an effort to alleviate the burden on the driver and to limit monetary claims against the agency, this bill seeks to amend the Code of Criminal Procedure to permit the director of DPS, or the authorized representative of the director, to file an ex parte petition for expunction of criminal records in these cases.

H.B. 3093 allows DPS to properly remove all records and files relating to the arrest from the computerized criminal history database maintained by DPS and from any law enforcement agencies, jails, magistrates, courts and other entities authorized under Chapter 55.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Article 55.01, Code of Criminal Procedure, by adding Subsection (a-1), as follows:

(a-1) Provides that notwithstanding Subsection (a)(2)(C), a person's conviction of a felony in the five years preceding the date of the arrest does not affect the person's entitlement to expunction for purposes of an ex parte petition filed on behalf of the person by the director of the Department of Public Safety (DPS) under Section 2(e), Article 55.02.

SECTION 2. Amends Section 2, Article 55.02, Code of Criminal Procedure, by amending Subsection (d) and adding Subsections (e) and (f), as follows:

(d) Requires the court to enter an order directing expunction upon finding that the petitioner, or a person for whom an ex parte petition is filed under Subsection (e), is entitled to expunction of any records and files that are the subject of the petition.

(e) Authorizes the director of DPS or the director's authorized representative to file on behalf of a person described by Subsection (a) of this section or by Section 2a an ex parte petition for expunction in a certain district court.

(f) Requires an ex parte petition filed under Subsection (e) to be verified and include specific information or an explanation for why one or more items of such information is not included in the petition.

SECTION 3. Effective date: September 1, 2005.