

BILL ANALYSIS

Senate Research Center
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S.B. 462
By: West
Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law and court decisions have made it increasingly difficult for a person who has certain criminal charges that have been dismissed to receive an expunction. This was compounded by the July 2007, Texas Supreme Court ruling in *State vs. Beam* where the Court ruled that even a Class C misdemeanor that has been dismissed through completion of deferred adjudication cannot be expunged until the statute of limitations for the offense has expired.

Texas law allows the records of criminal charges to be expunged only under a narrow set of circumstances. Those circumstances include when a case has resulted in acquittal, when a person has received a pardon, and when the charges are the result of mistaken or misused identify.

The ramifications of this legal barrier have negative consequences for persons seeking employment when confronted with employers who now routinely implement background checks. If a case has been dismissed, is no longer under investigation and the subject no longer faces prosecution for the offense, an individual should be able to have a record expunged.

S.B. 462 addresses the issue related to the expunction of criminal charges when the case has been dismissed.

As proposed, S.B. 462 amends current law relating to the right to an expunction of records and files relating to a person's arrest.

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(a), Code of Criminal Procedure, as follows:

(a) Entitles a person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor to have all records and files relating to the arrest expunged if:

(1) the person is tried for the offense for which the person was arrested and is:

(A) acquitted by the trial court, except as provided by Subsection (c) (relating to prohibiting expunction of records if the offense for which the person was acquitted arose out of a criminal episode and the person was convicted of or remains subject to prosecution for at least one other offense occurring during the criminal episode), rather than this section; or

(B) convicted and subsequently pardoned; or

(2) the person has been released and the charge, if any, has not resulted in a final conviction and is no longer pending and there was no court-ordered community

supervision or deferred disposition under this code for any offense except for a Class C misdemeanor, provided that one of the following conditions exists, rather than requiring that each of the following conditions exist:

(A) an indictment, information, or complaint charging the person with the commission of a felony or misdemeanor arising out of the transaction for which the person was arrested:

(i) has not been presented against the person at any time following the arrest, and at least 180 days have elapsed from the date of the arrest; or

(ii) if presented at any time following the arrest, was dismissed or quashed, rather than for an offense arising out of the transaction for which the person was arrested or, if an indictment or information charging the person with commission of a felony was presented, the indictment or information has been dismissed or quashed, and:

(a) at least 180 days have elapsed from the date the indictment, information, or complaint was dismissed or quashed; and

(b) the court finds that the indictment, information, or complaint was dismissed or quashed because the person successfully completed a pretrial intervention program authorized under Section 76.011 (Pretrial Services), Government Code, because the person successfully completed a period of deferred disposition under Article 45.051 (Suspension of Sentence and Deferral of Final Disposition), because the presentment had been made because of mistake, false information, or other similar reason indicating absence of probable cause at the time of the dismissal to believe the person committed the offense, or because the indictment, information, or complaint was void; or

(B) prosecution of the person for the offense for which the person was arrested is no longer possible because the limitations period has expired.

Deletes existing text of Paragraph (A)(i) relating to the limitations period expiring before the date on which a petition for expunction was filed under Article 55.02 (Procedure For Expunction).

Deletes existing text of Paragraph (B) relating to the person having been released and the charge, if any, having not resulted in a final conviction and is no longer pending and there having been no court ordered community supervision under Article 42.12 (Community Supervision) for any offense other than a Class C misdemeanor.

Deletes existing text of Paragraph (C) relating to the person having not been convicted of a felony in the five years preceding the date of the arrest.

Makes nonsubstantive and conforming changes.

SECTION 2. Repealer: Article 55.01(a-1) (relating to a person's conviction of a felony in the five years preceding the date of the arrest not affecting 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), Code of Criminal Procedure.

SECTION 3. Provides that the change in law made by this Act applies to a person seeking expunction of records and files relating to an arrest regardless of whether the arrest occurred before, on, or after the effective date of this Act.

SECTION 4. Effective date: upon passage or September 1, 2011.