

SUBJECT: Prohibiting release of expunged criminal records

COMMITTEE: Criminal Jurisprudence —favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Denny, Escobar, Raymond, Reyna
0 nays
3 absent — Hodge, P. Moreno, Pena

SENATE VOTE: On final passage, April 14 — 31-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: Code of Criminal Procedure, art. 55.01 allows expunction **C** sealing or destroying **C** of arrest records for felony or misdemeanor offenses if a person is tried for an offense and acquitted or is pardoned after being convicted. The statute also provides for expunction under other conditions, such as if an indictment is dismissed or quashed.

In 2003, the 78th Legislature enacted SB 1477 by West, which amended Code of Criminal Procedure, art. 55.03, to allow the release, dissemination, or use of criminal records and files that are the subject of a final expunction order under certain exceptions defined in Government Code, sec. 411.083. Under this section, criminal history record information is maintained by the Department of Public Safety (DPS) for use by the department and, except as provided by the section, may not be disseminated by the department.

The exceptions in secs. 411.083(b)(1), (2) and (3) allow DPS to grant access to criminal history record information to 1) criminal justice agencies; 2) noncriminal justice agencies authorized by federal statute or executive order or by state statute to receive such information; and 3) the person who is the subject of the information.

DIGEST: SB 166 would amend Code of Criminal Procedure, art. 55.03 to prohibit the release, dissemination, or use, and also the maintenance, of expunged records and files for any purpose, including those specified in Government Code, sec. 411.083(b)(1), (2) and (3).

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, 2005. It would apply to any expunged records, regardless of the date of the expunction order.

SUPPORTERS SAY: SB 166 would correct an unintended consequence of the amendment made by the 78th Legislature to Code of Criminal Procedure, art. 55.03. SB 1477 was enacted to provide for orders of nondisclosure for those placed on deferred adjudication, under which a judge may dismiss charges against a defendant who successfully completes a term of community supervision. Incorporated into the bill were minor changes made to the expunction articles, including changes to art. 55.03, which were meant to apply to orders of nondisclosure rather than orders of expunction.

However, because DPS has interpreted the current language to authorize it to maintain and disseminate expunged records and files, some individuals who have been granted a lawful expunction order nevertheless have been shown to have criminal history records when criminal checks have been processed against them.

SB 166 would resolve this problem by preventing any release of lawfully expunged information, resolving current ambiguities regarding what criminal history record information the DPS can release.

OPPONENTS SAY: Closure of criminal records could jeopardize public safety. Criminal and non-criminal justice agencies should be privy to criminal history record information. Full criminal background information should be available on people who apply to work in positions of public trust, such as in day-care centers, hospitals, and police departments.

NOTES: The companion bill, HB 269 by Keel, passed the House on March 17 and was scheduled for a public hearing in the Senate Criminal Justice Committee on May 17.