



The Attorney General of Texas

January 20, 1978

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Honorable A. R. Schwartz
Senator of the State of Texas
Capitol Building
Austin, Texas

Opinion No. H-1118

Re: Procedure for expungement of
police records.

Dear Senator Schwartz:

You have requested our opinion as to whether Senate Bill 471, Acts 1977, 65th Leg., ch. 747, at 1880, codified as articles 55.01-55.05, Texas Code of Criminal Procedure, preempts the right of local public entities to destroy arrest records pursuant to an internal administrative procedure.

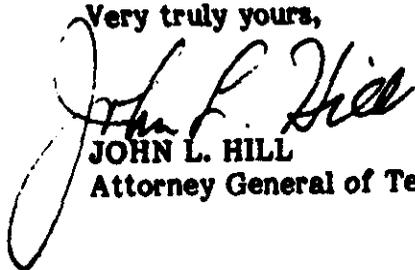
In Attorney General Opinion H-808 (1976), we held that, with two exceptions, a record of an arrest may be destroyed pursuant to the same authority by which it is kept. We noted that no Texas statute specifically requires the maintenance of arrest records by a law enforcement agency.

Senate Bill 471 confers upon certain persons a right to the expungement of all records relating to their arrest. Code Crim. Proc. art. 55.01. The statute establishes a procedure by which an arrested person may file a petition for expunction, and describes the effect of an expunction order. It does not impose any requirement that arrest records be maintained and its effect does not encompass the entire range of arrest records. In our opinion, Senate Bill 471 does not conflict with or preempt the right of local public entities to destroy arrest records pursuant to the same authority by which they are maintained, as established in Attorney General Opinion H-808. Rather, the statute merely describes certain instances in which a law enforcement agency is required to destroy such records.

S U M M A R Y

Senate Bill 471, Acts 1977, 65th Leg., ch. 747, at 1880, codified as articles 55.01-55.05, Texas Code of Criminal Procedure, does not preempt the right of local public entities to destroy arrest records pursuant to the same authority by which such records are maintained, but merely requires a law enforcement agency to destroy those records in certain instances.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


DAVID M. KENDALL, First Assistant


C. ROBERT HEATH, Chairman
Opinion Committee

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