

BILL ANALYSIS

S.B. 1916
By: West
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Since the first DNA exoneration in 1989, another 233 exonerations have taken place in the United States. The most recent figures point to 39 of those exonerations occurring in Texas, the most of any state. Twenty exonerations have come from Dallas County, the most from any single jurisdiction.

Although the person is freed from prison, more obstacles are encountered. Although the person is exonerated, the criminal records connected with the arrest, indictment, and conviction of the offense still exist. While an exoneration and pardon overturns the conviction and releases the person from incarceration, an expunction is still needed to remove records of the offense from various national, state, and local criminal history records repositories.

In order to have a criminal record expunged, legal representation is required. But in the case of an exoneration and pardon based on the individual's innocence, it places an additional burden on the applicant—the exoneree—to secure the legal representation needed for an expunction.

Presently, in Texas law, expunction is not automatic to the pardon process. It requires a separate process through the court system. The expunction process must be handled by a private attorney or a legal representative working on behalf of the exoneree. There are court costs and possible attorney's fees involved that could run into thousands of dollars. Without an expunction, the full benefit of the pardon cannot be realized by the individual.

S.B. 1916 sets forth the procedure for obtaining an expunction order in a case in which a defendant is convicted and subsequently pardoned or otherwise granted relief on the basis of actual innocence with respect to that offense, including matters relating to representation for the individual.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Article 55.01(a), Code of Criminal Procedure, to entitle 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 the person is tried for the offense for which the person was arrested and is convicted and subsequently pardoned, or otherwise granted relief on the basis of actual innocence with respect of that offense, or each of certain conditions exist. Makes nonsubstantive changes.

SECTION 2. Amends Article 55.02, Code of Criminal Procedure, by adding Section 1a, as follows:

Sec. 1a. (a) Requires the trial court presiding over a case in which a defendant is convicted and subsequently pardoned or otherwise subsequently granted relief on the basis of actual innocence of the offense of which the defendant was convicted, if the trial court is a district court, or a district court in the county in which the trial court is located, to enter an order of expunction for a person entitled to expunction under Article

55.01(a)(1)(B) (regarding the circumstance which entitles a person to have his or her criminal record expunged) not later than the 30th day after the date the court receives notice of the pardon or other grant of relief. Requires the person to provide to the district court all of the information required in a petition for expunction under Section 2(b) (regarding certain information that is required to be included in a petition for expunction).

(b) Requires the attorney for the state to prepare an expunction order under this section for the court's signature.

(c) Requires the court to include in an expunction order under this section a listing of each official, agency, or other entity of this state or political subdivision of this state and each private entity that there is reason to believe has any record or file that is subject to the order. Requires the court to also provide in an expunction order under this section that the Department of Public Safety (DPS) and the Texas Department of Criminal Justice are required to return all records and files that are subject to the expunction order to the court; and delete from its public records all index reference to the records and files that are subject to the expunction order.

(d) Requires the court to retain all records and files provided to the court under Subsection (c) until the statute of limitations has run for any civil case or proceeding relating to the wrongful imprisonment of the person subject to the expunction order.

SECTION 3. Amends Section 2(a), Article 55.02, Code of Criminal Procedure, to authorize a person who is entitled to expunction of records and files under Article 55.01(a)(2) (regarding certain conditions that exist which entitle a person to have criminal records expunged), rather than 55.01(a) (regarding a person being entitled to have his or her criminal record expunged), or a person who is eligible for expunction of records and files under Article 55.01(b) (relating to certain information that is required to be included on a petition for expunction) to file an ex parte petition for expunction in a district court for the county in which the petitioner was arrested, or in which the offense was alleged to have occurred.

SECTION 4. Amends Section 3(c), Article 55.02, Code of Criminal Procedure, to require the clerk of the court, when the order of expunction is final, to send a certified copy of the order to the Crime Records Service of DPS and to each official or agency or other governmental entity of this state or of any political subdivision of this state named in the order, rather than designated by the person who is the subject of the order. Authorizes the clerk, in sending the order to a governmental entity named in the order, rather than designated by the person, to elect to substitute hand delivery by certified mail under this subsection, but requires the clerk to receive a receipt for that hand-delivered order.

SECTION 5. Amends Section 5(a), Article 55.02, Code of Criminal Procedure, to require each official or agency or other governmental entity named in the order, except as provided by Subsections (f) (regarding certain actions each governmental entity named in an order is required to undertake on receipt of an order granting expunction to a person entitled to expunction) and (g) (regarding the authorization for governmental entities named in an order for expunction to retain certain records of financial transactions), on receipt of the order, to return all records and files that are subject to the expunction order to the court or in cases other than those described by Section 1a, if removal is impracticable, obliterate all portions of the record or file that identify the person who is the subject of the order and notify the court of its action.

SECTION 6. Provides that this Act applies to the expunction of arrest records related to a criminal offense for which a pardon or other relief on the basis of actual innocence was granted before, on, or after the effective date of this Act.

SECTION 7. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.