

By: West

S.B. No. 1916

A BILL TO BE ENTITLED

AN ACT

relating to the automatic expunction of arrest records and files after an individual receives a pardon or a grant of certain other relief with respect to the offense for which the individual was arrested.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (a), Article 55.01, Code of Criminal Procedure, is amended to read as follows:

(a) A person who has been placed under a custodial or noncustodial arrest for commission of either a felony or misdemeanor is entitled 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) of this section; or

(B) convicted and subsequently:

(i) pardoned; or

(ii) otherwise granted relief on the basis of actual innocence with respect to that offense; or

(2) each of the following conditions exist:

(A) an indictment or information charging the person with commission of a felony has not been presented against the person for an offense arising out of the transaction for which

1 the person was arrested or, if an indictment or information
2 charging the person with commission of a felony was presented, the
3 indictment or information has been dismissed or quashed, and:

4 (i) the limitations period expired before
5 the date on which a petition for expunction was filed under Article
6 55.02; or

7 (ii) the court finds that the indictment or
8 information was dismissed or quashed because the presentment had
9 been made because of mistake, false information, or other similar
10 reason indicating absence of probable cause at the time of the
11 dismissal to believe the person committed the offense or because it
12 was void;

13 (B) the person has been released and the charge,
14 if any, has not resulted in a final conviction and is no longer
15 pending and there was no court ordered community supervision under
16 Article 42.12 for any offense other than a Class C misdemeanor; and

17 (C) the person has not been convicted of a felony
18 in the five years preceding the date of the arrest.

19 SECTION 2. Article 55.02, Code of Criminal Procedure, is
20 amended by adding Section 1a to read as follows:

21 Sec. 1a. (a) The trial court presiding over a case in which
22 a defendant is convicted and subsequently pardoned or otherwise
23 subsequently granted relief on the basis of actual innocence of the
24 offense of which the defendant was convicted, if the trial court is
25 a district court, or a district court in the county in which the
26 trial court is located, shall enter an order of expunction for a
27 person entitled to expunction under Article 55.01(a)(1)(B) not

1 later than the 30th day after the date the court receives notice of
2 the pardon or other grant of relief. The person shall provide to
3 the district court all of the information required in a petition for
4 expunction under Section 2(b).

5 (b) The attorney for the state shall prepare an expunction
6 order under this section for the court's signature.

7 (c) The court shall include in an expunction order under
8 this section a listing of each official, agency, or other entity of
9 this state or political subdivision of this state and each private
10 entity that there is reason to believe has any record or file that
11 is subject to the order. The court shall also provide in an
12 expunction order under this section that the Department of Public
13 Safety and the Texas Department of Criminal Justice shall:

14 (1) return all records and files that are subject to
15 the expunction order to the court; and

16 (2) delete from its public records all index
17 references to the records and files that are subject to the
18 expunction order.

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

23 SECTION 3. Subsection (a), Section 2, Article 55.02, Code
24 of Criminal Procedure, is amended to read as follows:

25 (a) A person who is entitled to expunction of records and
26 files under Article 55.01(a)(2) [~~55.01(a)~~] or a person who is
27 eligible for expunction of records and files under Article 55.01(b)

1 may file an ex parte petition for expunction in a district court for
2 the county in which:

3 (1) the petitioner was arrested; or

4 (2) the offense was alleged to have occurred.

5 SECTION 4. Subsection (c), Section 3, Article 55.02, Code
6 of Criminal Procedure, is amended to read as follows:

7 (c) When the order of expunction is final, the clerk of the
8 court shall send a certified copy of the order to the Crime Records
9 Service of the Department of Public Safety and to each official or
10 agency or other governmental entity of this state or of any
11 political subdivision of this state named in [~~designated by the~~
12 ~~person who is the subject of~~] the order. The certified copy of the
13 order must be sent by secure electronic mail, electronic
14 transmission, or facsimile transmission or otherwise by certified
15 mail, return receipt requested. In sending the order to a
16 governmental entity named in the order [~~designated by the person~~],
17 the clerk may elect to substitute hand delivery for certified mail
18 under this subsection, but the clerk must receive a receipt for that
19 hand-delivered order.

20 SECTION 5. Subsection (a), Section 5, Article 55.02, Code
21 of Criminal Procedure, is amended to read as follows:

22 (a) Except as provided by Subsections (f) and (g), on
23 receipt of the order, each official or agency or other governmental
24 entity named in the order shall:

25 (1) return all records and files that are subject to
26 the expunction order to the court or in cases other than those
27 described by Section 1a, if removal is impracticable, obliterate

1 all portions of the record or file that identify the person who is
2 the subject of the order and notify the court of its action; and

3 (2) delete from its public records all index
4 references to the records and files that are subject to the
5 expunction order.

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

10 SECTION 7. This Act takes effect September 1, 2009.