

## **BILL ANALYSIS**

Senate Research Center

S.B. 167  
By: West  
Criminal Justice  
8/17/2011  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Since the first DNA exoneration in 1989, there have been 266 such exonerations in the United States. The most recent figures say that 41 of those exonerations have occurred in Texas, the most in any state. Twenty-four have come from Dallas County, the most from any single jurisdiction.

Although exonerated, the criminal records connected to the arrest, indictment, and conviction for the offense still exist. While an exoneration and pardon overturn the conviction and release the subject from incarceration, an expunction is still needed to remove records of the offense from various national, state, and local criminal history records repositories.

Presently, the expunction process that must be handled through the court system is required to be handled by a private attorney or a legal representative working on behalf of the exoneree. There are court costs and possible attorney fees involved that could cost thousands of dollars.

The actions of wrongful arrest, indictment, conviction, and incarceration were carried forth by the various components of the criminal justice system. The final act of overturning a wrongful conviction is the expunction of all criminal records related to the alleged offense, and wrongful conviction should also be completed by the criminal justice system.

S.B. 167 provides the opportunity for Texas' criminal justice system to complete the cycle.

S.B. 167 amends current law 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.

### **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, to provide that 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 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 to that offense.

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 granted relief or pardoned on the basis of actual innocence of the offense on 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) (relating to a person convicted and subsequently pardoned or granted relief on the basis of innocence)

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) (relating to the contents of and verification of an ex parte petition).

(b) Requires the attorney for the state to prepare an expunction order under this section for the court's signature, and notify the Texas Department of Criminal Justice (TDCJ) if the person is in the custody of TDCJ.

(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:

(1) TDCJ is required to send to the court the documents delivered to TDCJ under Section 8(a) (relating to requiring a county that transfers a defendant to TDCJ under this article to deliver to an officer designated by the TDCJ certain documents), Article 42.09 (Commencement of Sentence; Status During Appeal; Pen Packet); and

(2) the Department of Public Safety of the State of Texas (DPS) and TDCJ are required to delete or redact, as appropriate, from their public records all index references to the records and files that are subject to the expunction order.

(d) Requires the court to retain all documents sent to the court under Subsection (c)(1) 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) (relating to the required conditions for all records and files relating to the arrest to be expunged), rather than under Article 55.01(a), or a person eligible for expunction of records and files under Article 55.01(b) (authorizing a district court to expunge all records and files relating to the arrest of a person who has been arrested for commission of a felony or misdemeanor under the procedure established under Article 55.02 of this code if the person meets certain conditions), to file an ex parte petition for expunction in a district court for the county in which the petitioner was arrested or the county 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 the 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 sending a certified copy of the order to those entities designated by the person who is the subject of the order. Makes a conforming change.

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) (relating to the requirements of each official, agency, or other governmental entity named in an order granting expunction to a person) and (g) (relating to authorization to retain certain records), on receipt of the order, to take certain actions, including 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, 2011.