

BILL ANALYSIS

S.B. 167
By: West
Criminal Jurisprudence
Committee Report (Amended)

BACKGROUND AND PURPOSE

Since the first DNA exoneration more than two decades ago, there have been more than 250 such exonerations in the United States. The most recent figures report that approximately 40 of those exonerations have occurred in Texas, the most in any state. When a person is 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 person from incarceration, an expunction is still needed to remove records relating to the offense from various national, state, and local criminal history records repositories.

Presently, the expunction process must proceed through the court system where it must be handled by a private attorney or a legal representative working on behalf of the exoneree, which may sometimes cost the exoneree thousands of dollars in court costs and attorney's fees. Concerned parties contend that the actions of wrongful arrest, indictment, conviction, and incarceration were carried forth by the various components of the criminal justice system and that the final act of overturning a wrongful conviction is the expunction of all criminal records related to the alleged offense, which should also be completed by the criminal justice system

S.B. 167 seeks to address this concern regarding the Texas criminal justice system by providing for the automatic expunction of arrest records and files relating to an individual who is entitled to such expunction on receiving a pardon or a grant of certain other relief with respect to the offense for which the individual was arrested.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 167 amends the Code of Criminal Procedure to extend the entitlement to have all records and files relating to an arrest expunged to a person who has been placed under a custodial or noncustodial arrest for the commission of either a felony or misdemeanor, tried for the offense for which the person was arrested, and convicted and subsequently granted relief on the basis of actual innocence with respect to that offense.

S.B. 167 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 on the basis of such actual innocence not later than the 30th day after the date the court receives notice of the pardon or other grant of relief. The bill requires the person to provide to the district court all of the identifying information required by law to be included in a petition for expunction. The bill requires the attorney for the state to prepare an expunction order for the court's signature and to notify the Texas Department of Criminal Justice

(TDCJ) if the person is in TDCJ custody.

S.B. 167 requires the court to include in such an expunction order a listing of each official, agency, or other entity of Texas or political subdivision of Texas and each private entity that there is reason to believe has any record or file that is subject to the order. The bill requires the court to provide in the expunction order that TDCJ is required to send to the court the documents delivered to TDCJ on the transfer of a defendant by a county to TDCJ at the start of the defendant's sentence, and that the Department of Public Safety 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. The bill requires the court to retain all such documents sent to the court 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. The bill excludes such cases from a provision of law requiring each official or agency or other governmental entity named in an expunction order, if records and files that are subject to the order are not returned to the court and removal is impracticable, to 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.

S.B. 167 makes a conforming change and nonsubstantive changes.

EFFECTIVE DATE

September 1, 2011.

EXPLANATION OF AMENDMENTS

Committee Amendment No. 1

Committee Amendment No. 1, in a provision requiring a trial court to enter an order of expunction for a person entitled to expunction under the law as amended by the bill, makes that provision applicable to 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 rather than to the trial court presiding over a case in which a defendant is pardoned or otherwise subsequently granted relief on the basis of actual innocence.