

BILL ANALYSIS

Senate Research Center
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S.B. 325
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Criminal Justice
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Orders of expunction completely erase a given charge from an individual's criminal history. Courts may grant orders of expunction for a variety of circumstances, including situations where an individual is ultimately acquitted. However, even in situations where a jury acquits, the individual must take the initiative to pursue an order of expunction and pay the required fee. This process for receiving a record of expunction can present a unique challenge to defendants who are acquitted.

To address this issue, S.B. 325 amends Article 55.02, Code of Criminal Procedure, to mandate that the state stand in the place of the defendant and request an expunction from the court upon a defendant's acquittal.

When an individual is acquitted, he or she is considered "not guilty" of the charge under the law. To require these individuals to subsequently pay a fee to correct the mistake of the state unjustly burdens the acquitted individual. These expunction orders can be costly additions to attorney's fees the defendant undoubtedly faces. The most populous counties across the state charge between \$214 and \$387 to petition for an order of expunction. Allowing the state to stand in place of the defendant to request the expunction justly remedies this situation. Given that acquittals are incredibly rare, not guilty individuals would receive an expunction without creating a significant financial burden for the state. For example, in Tarrant County, only 13 of the 170 cases prosecuted in 2015 by the District Attorney's Office resulted in an acquittal. The district attorney expects those numbers to remain steady for 2016 as well. Taking on this burden for the acquitted individual is a small price to pay compared to the lifelong consequences of a criminal record for an innocent individual.

As proposed, S.B. 325 amends current law relating to the procedure for expunction of arrest records and files for certain persons who are tried for an offense and subsequently acquitted.

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 Section 1, Article 55.02, Code of Criminal Procedure, as follows:

Sec. 1. Requires that, at the request of the acquitted person, rather than the defendant, and after notice to the state, or at the request of the attorney for the state, certain trial courts presiding over the case in which the person was acquitted, to enter an order of expunction for a person entitled to expunction not later than the 30th day after the date of the acquittal. Requires the trial court, on acquittal, to advise the acquitted person of the right to expunction. Requires the acquitted person or the attorney for the state, rather than the defendant, to provide to the district court all of the information required in a petition for expunction. Requires the attorney for the state to prepare the order for the court's signature. Deletes existing text requiring the attorney for the defendant in the case in which the defendant was acquitted, if the defendant was represented by counsel, or the

attorney for the state, if the defendant was not represented by counsel, to prepare the order for the court's signature. Makes conforming and nonsubstantive changes.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2017.