

By: West

S.B. No. 167

A BILL TO BE ENTITLED

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

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

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

9 (a) A person who has been placed under a custodial or  
10 noncustodial arrest for commission of either a felony or  
11 misdemeanor is entitled to have all records and files relating to  
12 the arrest expunged if:

13 (1) the person is tried for the offense for which the  
14 person was arrested and is:

15 (A) acquitted by the trial court, except as  
16 provided by Subsection (c) of this section; or

17 (B) convicted and subsequently:

18 (i) pardoned; or

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

21 (2) each of the following conditions exist:

22 (A) an indictment or information charging the  
23 person with commission of a felony has not been presented against  
24 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 person completed a  
9 pretrial intervention program authorized under Section 76.011,  
10 Government Code, or because the presentment had been made because  
11 of mistake, false information, or other similar reason indicating  
12 absence of probable cause at the time of the dismissal to believe  
13 the person committed the offense or because it was void;

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

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

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

22 Sec. 1a. (a) The trial court presiding over a case in which  
23 a defendant is convicted and subsequently pardoned or otherwise  
24 subsequently granted relief on the basis of actual innocence of the  
25 offense of which the defendant was convicted, if the trial court is  
26 a district court, or a district court in the county in which the  
27 trial court is located, shall enter an order of expunction for a

1 person entitled to expunction under Article 55.01(a)(1)(B) not  
2 later than the 30th day after the date the court receives notice of  
3 the pardon or other grant of relief. The person shall provide to  
4 the district court all of the information required in a petition for  
5 expunction under Section 2(b).

6 (b) The attorney for the state shall:

7 (1) prepare an expunction order under this section for  
8 the court's signature; and

9 (2) notify the Texas Department of Criminal Justice if  
10 the person is in the custody of the department.

11 (c) The court shall include in an expunction order under  
12 this section a listing of each official, agency, or other entity of  
13 this state or political subdivision of this state and each private  
14 entity that there is reason to believe has any record or file that  
15 is subject to the order. The court shall also provide in an  
16 expunction order under this section that:

17 (1) the Texas Department of Criminal Justice shall  
18 send to the court the documents delivered to the department under  
19 Section 8(a), Article 42.09; and

20 (2) the Department of Public Safety and the Texas  
21 Department of Criminal Justice shall delete or redact, as  
22 appropriate, from their public records all index references to the  
23 records and files that are subject to the expunction order.

24 (d) The court shall retain all documents sent to the court  
25 under Subsection (c)(1) until the statute of limitations has run  
26 for any civil case or proceeding relating to the wrongful  
27 imprisonment of the person subject to the expunction order.

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

3 (a) A person who is entitled to expunction of records and  
4 files under Article 55.01(a)(2) [~~55.01(a)~~] or a person who is  
5 eligible for expunction of records and files under Article 55.01(b)  
6 may file an ex parte petition for expunction in a district court for  
7 the county in which:

- 8 (1) the petitioner was arrested; or  
9 (2) the offense was alleged to have occurred.

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

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

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

27 (a) Except as provided by Subsections (f) and (g), on

1 receipt of the order, each official or agency or other governmental  
2 entity named in the order shall:

3           (1) return all records and files that are subject to  
4 the expunction order to the court or in cases other than those  
5 described by Section 1a, if removal is impracticable, obliterate  
6 all portions of the record or file that identify the person who is  
7 the subject of the order and notify the court of its action; and

8           (2) delete from its public records all index  
9 references to the records and files that are subject to the  
10 expunction order.

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

15           SECTION 7. This Act takes effect September 1, 2011.