

1-1 By: West S.B. No. 167
1-2 (In the Senate - Filed November 8, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 April 11, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 11, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 167 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the automatic expunction of arrest records and files
1-11 after an individual receives a pardon or a grant of certain other
1-12 relief with respect to the offense for which the individual was
1-13 arrested.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subsection (a), Article 55.01, Code of Criminal
1-16 Procedure, is amended to read as follows:

1-17 (a) A person who has been placed under a custodial or
1-18 noncustodial arrest for commission of either a felony or
1-19 misdemeanor is entitled to have all records and files relating to
1-20 the arrest expunged if:

1-21 (1) the person is tried for the offense for which the
1-22 person was arrested and is:

1-23 (A) acquitted by the trial court, except as
1-24 provided by Subsection (c) of this section; or

1-25 (B) convicted and subsequently:

1-26 (i) pardoned; or

1-27 (ii) otherwise granted relief on the basis
1-28 of actual innocence with respect to that offense; or

1-29 (2) each of the following conditions exist:

1-30 (A) an indictment or information charging the
1-31 person with commission of a felony has not been presented against
1-32 the person for an offense arising out of the transaction for which
1-33 the person was arrested or, if an indictment or information
1-34 charging the person with commission of a felony was presented, the
1-35 indictment or information has been dismissed or quashed, and:

1-36 (i) the limitations period expired before
1-37 the date on which a petition for expunction was filed under Article
1-38 55.02; or

1-39 (ii) the court finds that the indictment or
1-40 information was dismissed or quashed because the person completed a
1-41 pretrial intervention program authorized under Section 76.011,
1-42 Government Code, or because the presentment had been made because
1-43 of mistake, false information, or other similar reason indicating
1-44 absence of probable cause at the time of the dismissal to believe
1-45 the person committed the offense or because it was void;

1-46 (B) the person has been released and the charge,
1-47 if any, has not resulted in a final conviction and is no longer
1-48 pending and there was no court ordered community supervision under
1-49 Article 42.12 for any offense other than a Class C misdemeanor; and

1-50 (C) the person has not been convicted of a felony
1-51 in the five years preceding the date of the arrest.

1-52 SECTION 2. Article 55.02, Code of Criminal Procedure, is
1-53 amended by adding Section 1a to read as follows:

1-54 Sec. 1a. (a) The trial court presiding over a case in which
1-55 a defendant is convicted and subsequently pardoned or otherwise
1-56 subsequently granted relief on the basis of actual innocence of the
1-57 offense of which the defendant was convicted, if the trial court is
1-58 a district court, or a district court in the county in which the
1-59 trial court is located, shall enter an order of expunction for a
1-60 person entitled to expunction under Article 55.01(a)(1)(B) not
1-61 later than the 30th day after the date the court receives notice of
1-62 the pardon or other grant of relief. The person shall provide to
1-63 the district court all of the information required in a petition for

2-1 expunction under Section 2(b).

2-2 (b) The attorney for the state shall:

2-3 (1) prepare an expunction order under this section for
2-4 the court's signature; and

2-5 (2) notify the Texas Department of Criminal Justice if
2-6 the person is in the custody of the department.

2-7 (c) The court shall include in an expunction order under
2-8 this section a listing of each official, agency, or other entity of
2-9 this state or political subdivision of this state and each private
2-10 entity that there is reason to believe has any record or file that
2-11 is subject to the order. The court shall also provide in an
2-12 expunction order under this section that:

2-13 (1) the Texas Department of Criminal Justice shall
2-14 send to the court the documents delivered to the department under
2-15 Section 8(a), Article 42.09; and

2-16 (2) the Department of Public Safety and the Texas
2-17 Department of Criminal Justice shall delete or redact, as
2-18 appropriate, from their public records all index references to the
2-19 records and files that are subject to the expunction order.

2-20 (d) The court shall retain all documents sent to the court
2-21 under Subsection (c)(1) until the statute of limitations has run
2-22 for any civil case or proceeding relating to the wrongful
2-23 imprisonment of the person subject to the expunction order.

2-24 SECTION 3. Subsection (a), Section 2, Article 55.02, Code
2-25 of Criminal Procedure, is amended to read as follows:

2-26 (a) A person who is entitled to expunction of records and
2-27 files under Article 55.01(a)(2) [~~55.01(a)~~] or a person who is
2-28 eligible for expunction of records and files under Article 55.01(b)
2-29 may file an ex parte petition for expunction in a district court for
2-30 the county in which:

2-31 (1) the petitioner was arrested; or

2-32 (2) the offense was alleged to have occurred.

2-33 SECTION 4. Subsection (c), Section 3, Article 55.02, Code
2-34 of Criminal Procedure, is amended to read as follows:

2-35 (c) When the order of expunction is final, the clerk of the
2-36 court shall send a certified copy of the order to the Crime Records
2-37 Service of the Department of Public Safety and to each official or
2-38 agency or other governmental entity of this state or of any
2-39 political subdivision of this state named in [~~designated by the~~
2-40 ~~person who is the subject of~~] the order. The certified copy of the
2-41 order must be sent by secure electronic mail, electronic
2-42 transmission, or facsimile transmission or otherwise by certified
2-43 mail, return receipt requested. In sending the order to a
2-44 governmental entity named in the order [~~designated by the person~~],
2-45 the clerk may elect to substitute hand delivery for certified mail
2-46 under this subsection, but the clerk must receive a receipt for that
2-47 hand-delivered order.

2-48 SECTION 5. Subsection (a), Section 5, Article 55.02, Code
2-49 of Criminal Procedure, is amended to read as follows:

2-50 (a) Except as provided by Subsections (f) and (g), on
2-51 receipt of the order, each official or agency or other governmental
2-52 entity named in the order shall:

2-53 (1) return all records and files that are subject to
2-54 the expunction order to the court or in cases other than those
2-55 described by Section 1a, if removal is impracticable, obliterate
2-56 all portions of the record or file that identify the person who is
2-57 the subject of the order and notify the court of its action; and

2-58 (2) delete from its public records all index
2-59 references to the records and files that are subject to the
2-60 expunction order.

2-61 SECTION 6. This Act applies to the expunction of arrest
2-62 records related to a criminal offense for which a pardon or other
2-63 relief on the basis of actual innocence was granted before, on, or
2-64 after the effective date of this Act.

2-65 SECTION 7. This Act takes effect September 1, 2011.

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