

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 557
By: Collier et al. (Burton)
Administration
5/22/2017
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Relating to the expunction of arrest records and files for certain persons who are tried for an offense and subsequently acquitted; authorizing a fee.

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, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Authorizes a district court, a justice court, or a municipal court of record, except as provided by Subsection (c) (relating to prohibiting a court from ordering the expunction of certain information relating to an arrest for an offense for which a person is subsequently acquitted, by a certain court) and subject to Subsection (b-1), to expunge all records and files relating to the arrest of a person, rather than authorizing a district court, except as provided by Subsection (c), 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 (Procedure for Expunction) if an office of the attorney representing the state authorized by law to prosecute the offense for which the person was arrested recommends the expunction to the court, rather than appropriate district court, before the person is tried for the offense, regardless of whether an indictment or information has been presented against the person in relation to the offense.

(b-1) Authorizes a justice court or a municipal court of record to only expunge records and files under Subsection (b) that relate to the arrest of a person for an offense punishable by fine only.

SECTION 2. Amends Section 1, Article 55.02, Code of Criminal Procedure, as follows:

Sec. 1. Requires the trial court presiding over the case in which the person, rather than defendant, was acquitted, if the trial court is a district court, a justice court, or a municipal court of record, or a district court in the county in which the trial court is located, at the request of the acquitted person, rather than defendant, and after notice to the state, or at the request of the attorney for the state with the consent of the acquitted person, to enter an order of expunction for a person entitled to expunction under Article 55.01(a)(1)(A) (relating to providing 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 certain information expunged if the person is tried for the offense for which the person was arrested and acquitted) not later than the 30th day after the date of the acquittal. Requires the trial court, on acquittal, to advise the acquitted person, rather than defendant, of the right to expunction. Requires the party requesting the order of expunction, rather than defendant, to provide to the court, rather than district court, all of the information required in a petition for expunction. Requires the attorney for the acquitted person in the

case in which the person was acquitted, if the person was represented by counsel, or the attorney for the state, if the person was not represented by counsel or if the attorney for the state requested the order of expunction, to prepare the order for the court's signature. Makes conforming changes.

SECTION 3. Amends Section 1a(a), Article 55.02, Code of Criminal Procedure, as follows:

(a) Requires that the trial court presiding over a case in which a person, rather than defendant, is convicted and subsequently granted relief or pardoned on the basis of actual innocence of the offense of which the person, rather than defendant, was convicted, if the trial court is a district court, a justice court, or a municipal court of record, 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)(ii) (relating to the entitlement of a person placed under certain arrest for certain offense to have all records expunged, if the person was tried and arrested for the offense and is convicted and subsequently pardoned on the basis of actual 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 court, rather than district court, all of the information required in a petition for expunction.

SECTION 4. Amends Section 2, Article 55.02, Code of Criminal Procedure, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Authorizes a person who is entitled to expunction of records and files under Article 55.01(a)(1)(A), 55.01(a)(1)(B)(i) (relating to the entitlement of a person placed under certain arrest for certain offense to have all records expunged, if the person was tried and arrested for the offense and is convicted and subsequently pardoned), or 55.01(a)(2) (relating to entitling a person placed under certain arrest for certain offense to have all records expunged, if the person has been released and the charge did not result in a final conviction) or a person who is eligible for expunction of records and files under Article 55.01(b) to file an ex parte petition for expunction in a certain district court for the county.

(a-1) Authorizes a person who is entitled to expunction of records and files under Article 55.01(a) (relating to entitling a person who has been placed under certain arrest for a certain offense to have all records and files expunged) or a person who is eligible for expunction of records and files under Article 55.01(b), if the arrest for which expunction is sought is for an offense punishable by fine only, to file an ex parte petition for expunction in a justice court or a municipal court of record in the county in which:

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

(b) Requires a petition filed under Subsection (a) or (a-1) to be verified and to include certain information.

SECTION 5. Amends Article 102.006, Code of Criminal Procedure, as follows:

Art. 102.006. FEES IN EXPUNCTION PROCEEDINGS. (a) Requires a petitioner seeking expunction of a criminal record in a district court, in addition to any other fees required by other law and except as provided by Subsection (b), to pay certain fees.

(a-1) Requires a petitioner seeking expunction of a criminal record in a justice court or a municipal court of record under Chapter 55 (Expunction of Criminal Records), in addition to any other fees required by other law and except as provided by Subsection (b), to pay a fee of \$100 for filing an ex parte petition for expunction to defray the cost of notifying state agencies of orders of expunction under that chapter.

(b) Requires the fees under Subsection (a) or the fee under Subsection (a-1), as applicable, to be waived in certain circumstances.

(c) Authorizes a court that grants a petition for expunction of a criminal record to order that any fee, or portion of a fee, required to be paid under this article or other law in relation to the petition be returned to the petitioner.

SECTION 6. Amends Section 27.031, Government Code, by adding Subsection (e), to provide that a justice court has concurrent jurisdiction with a district court and a municipal court of record over expunction proceedings relating to the arrest of a person for an offense punishable by fine only.

SECTION 7. Amends Section 30.00005, Government Code, by adding Subsection (e), to provide that the court has concurrent jurisdiction with a district court and a justice court over expunction proceedings relating to the arrest of a person for an offense punishable by fine only.

SECTION 8. Amends Subchapter B, Chapter 103, Government Code, by adding Section 103.02101, as follows:

Sec. 103.02101. ADDITIONAL FEE IN CERTAIN EXPUNCTION CASES: CODE OF CRIMINAL PROCEDURE. Requires a petitioner filing an ex parte petition for expunction in a justice court or a municipal court of record to pay a fee under Article 102.006, Code of Criminal Procedure, of \$100 to defray the costs of notifying state agencies of orders of expunction.

SECTION 9. Amends Subchapter E-1, Chapter 411, Government Code, by adding Section 411.0746, as follows:

Sec. 411.0746. RETURN OF FEES. Authorizes a court that issues an order of nondisclosure of criminal history record information under this subchapter (Order of Nondisclosure of Criminal History Record Information) to order that any fee, or portion of a fee, required to be paid under this subchapter or other law in relation to the order be returned to the person who is the subject of that order.

SECTION 10. Amends Section 202.001(b), Local Government Code, as follows:

(b) Authorizes records the destruction or obliteration of which is directed by an expunction order issued by a court, rather than district court, pursuant to state law to be destroyed without meeting the conditions of Subsection (a) (relating to authorizing a local government record to be destroyed under certain circumstances).

SECTION 11. (a) Provides that, except as otherwise provided by this section, this Act applies to an expunction of records and files relating to any criminal offense that occurred before, on, or after the effective date of this Act.

(b) Makes application of Section 1, Article 55.02, Code of Criminal Procedure, as amended by this Act, prospective.

(c) Makes application of Article 102.006(c), Code of Criminal Procedure, as added by this Act, prospective.

SECTION 12. Makes application of Section 411.0746, Government Code, as added by this Act, prospective.

SECTION 13. Effective date: September 1, 2017.