

BILL ANALYSIS

H.B. 1655
By: Reynolds
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A person who has been placed under arrest is entitled to have all records and files relating to the arrest expunged if certain conditions are met. However, there are instances in which a person who is investigated by a grand jury but never arrested cannot get the records relating to the investigation expunged because there was no arrest. Interested parties contend that the spirit of the law seeks to allow expunctions in such a situation and that arrest was not intended to be a bar to expunction. Many district attorneys allow expunctions when there was no arrest, and the parties contend that this common practice should be codified. H.B. 1655 seeks to address this issue.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

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

H.B. 1655 amends the Code of Criminal Procedure to entitle a person who is accused or suspected of committing a felony offense but is not placed under a custodial or noncustodial arrest for the offense to have all records and files relating to a grand jury investigation into the person's conduct expunged in the manner provided by law if the person was not indicted for any alleged offense by the grand jury and the statute of limitations has expired for any offense investigated by the grand jury. The bill authorizes a person who is so entitled to expunction to file an ex parte petition in a district court for the county in which the grand jury investigation occurred. The bill requires the petition to be verified and prescribes the required contents of the petition.

H.B. 1655 requires the court to set a hearing on the expunction matter not earlier than the 30th day after the filing of the petition and to give to each official or agency or other governmental entity named in the petition reasonable notice of the hearing by certified mail, return receipt requested, or by secure e-mail, electronic transmission, or facsimile transmission. The bill requires the court to enter an order directing expunction if the court finds that the petitioner is entitled to the expunction of any records or files that are the subject of the petition. The bill requires each official or agency or other governmental entity named in the expunction order, on receipt of the order, to return to the court all records and files that are subject to the expunction order or, if 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 and to delete from its

public records all index references to the records and files that are subject to the expunction order.

H.B. 1655 establishes that the court records concerning expunction proceedings for an order of expunction entered under the bill's provisions are not open for inspection by anyone except the person who is the subject of the order. The bill requires the clerk of the court to destroy all the files or other records received from an official, agency, or other governmental entity in response to an order of expunction not earlier than the 60th day after the date the order is issued or later than the first anniversary of that date. The bill requires the clerk, not later than the 30th day before the date on which the clerk destroys such files or other records, to provide notice by mail, e-mail, or facsimile transmission to the attorney representing the state in the expunction proceeding. The bill prohibits the clerk from destroying the files or other records until the first anniversary of the date the order of expunction is issued or the first business day after that date if the attorney representing the state objects to the destruction not later than the 20th day after receiving notice. The bill makes statutory provisions relating to the effects of a final expunction order applicable to an expunction under the bill's provisions.

H.B. 1655 makes it a Class B misdemeanor for a person who acquires knowledge of a grand jury investigation while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that investigation under the bill's provisions to knowingly release, disseminate, or otherwise use the records or files. The bill makes it a Class B misdemeanor to knowingly fail to return or to obliterate identifying portions of a record or file ordered expunged under the bill's provisions.

EFFECTIVE DATE

September 1, 2015.