

**SUBJECT:** Designating district court as the court to grant certain expunctions

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 7 ayes — Keel, Riddle, Ellis, Hodge, P. Moreno, Pena, Talton  
0 nays  
2 absent — Denny, Dunnam

**WITNESSES:** For — Jeane Brunson, Jo Ann Chastain, and Becky Wilbanks, County and District Clerks Association of Texas; Gail Turley, Goliad County and District Clerk, County and District Clerks Association of Texas  
  
Against — Jim Hamlin, Dallas County District Clerk, County and District Clerks Association of Texas  
  
On — W. Clay Abbott; Janice Gray, County and District Clerks Association of Texas; John Rolator Jr., Dallas County Criminal District Attorney

**BACKGROUND:** Code of Criminal Procedure, Art. 55.01(a)(1)(A) entitles a person who has been arrested for committing a felony or misdemeanor to have all records and files relating to the arrest expunged if the person has been acquitted by a trial court.  
  
Under Art. 55.01(b), a district court may expunge all records or files relating to an arrest if a person is tried, convicted, and acquitted by the court of criminal appeals. A person is not entitled to an expunction and a court may not order an expunction if a person was acquitted for an offense that was part of a group of crimes committed in one episode and the person has been convicted or still remains subject to prosecution for at least one of the other crimes (Art. 55.01(c)). Art. 55.02 provides the procedure for expunction.  
  
Code of Criminal Procedure, Art. 4.05 gives district courts and criminal district courts original jurisdiction over felony cases, misdemeanors involving official misconduct, and certain misdemeanors transferred from county courts.

Art. 4.07 gives county courts original jurisdiction over all misdemeanors not under the jurisdiction of a justice court and with a fine greater than \$500.

DIGEST:

CSHB 171 would amend Code of Criminal Procedure, Art. 55.02 to specify that the trial court required to enter an order of expunction for a person entitled to an expunction under Art. 55.01(a)(1)(A) would be:

- the district court that had presided over the case in which the person was acquitted; or
- a district court in the county in which the trial court that had presided over the case was located.

The bill would require the defendant's attorney to prepare the order for the court's signature. If the defendant was not represented by counsel, it would require the attorney for the state to prepare the order. In addition, the bill would eliminate the requirement that a hearing be conducted before the court granted an order of expunction.

CSHB 171 would amend other provisions in Art. 55.02 specifying "trial" or "district" court. It would:

- specify that the court required to advise the defendant of his or her right to an expunction was the trial court;
- specify that the court to which the defendant must provide information required in a petition for expunction was the district court;
- eliminate the specification of the trial court as the court that must require a state agency to request return of federal records relating to the arrest; and
- eliminate the specification of the trial court as the court whose order of expunction must include certain information.

CSHB 171 would take effect September 1, 2003, and apply only to a request for expunction made on or after that date.

SUPPORTERS  
SAY:

CSHB 171 would amend the procedure of expunction provided in Art. 55.02 so it conformed to the exclusive jurisdiction of a district court to grant an expunction. Currently, Art. 55.02 designates the trial court that presided over the case as the court responsible for granting an expunction for a person entitled to an expunction upon acquittal. However, if the trial court is a lower court, such as a county court of law, the requirement conflicts with a district

court's jurisdiction to grant an expunction upon acquittal. The bill would resolve the conflict by specifying that a district court must enter the order of expunction.

The bill would eliminate confusion among lower courts regarding what court has jurisdiction to issue an expunction upon acquittal. For example, some municipal courts have attempted to follow current law by granting expunctions as trial courts only to have their orders returned by the local sheriff for lack of jurisdiction. These courts should not be in the business of granting expunctions.

Designating an attorney for the defendant or the state to prepare the order of expunction would ensure that district court clerks were not burdened with that responsibility. Drafting an order of expunction is a more appropriate task for an attorney because it requires legal knowledge of which agencies or entities might retain records of an arrest and thus should be ordered to return or destroy their records.

Eliminating the requirement that a hearing be held before a court could grant an expunction would remove an additional hurdle for a person who had been acquitted at trial. These people should not have to endure another trial before their records are expunged.

**OPPONENTS  
SAY:**

CSHB 171 would increase the workload for already overburdened district courts. District courts in larger counties would have to process hundreds of misdemeanor expunctions now handled by the trial courts. A district court that was not the trial court would have to create a new file for the expunction, only to expunge it later.

There is no need to amend the current law. The trial court is the most appropriate court to grant an expunction because it already has heard the case and has all the information necessary to grant an expunction. Some county courts have granted expunctions under current law and have not experienced any problems.

The bill could increase costs for an acquitted defendant seeking an expunction. Instead of making a motion to expunge in trial court, a defendant would have to pay a fee to file a new case in a district court.

**NOTES:** The substitute modified the original version of the bill by removing a requirement that a court hold a hearing before it could grant an expunction. Also, the substitute would designate either private counsel or an attorney for the state to prepare the order of expunction for the court.