

- SUBJECT:** Automatic criminal record expunction for pardon, actual innocence
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 10 ayes — Gallego, Christian, Fletcher, Hodge, Kent, Miklos, Pierson, Riddle, Vaught, Vo
- 0 nays
- 1 absent — Moody
- SENATE VOTE:** On final passage, April 16 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** For — (*Registered, but did not testify:* Edwin Colfax, The Justice Project; Kristin Etter, Texas Criminal Defense Lawyers Association; Matt Simpson, The ACLU of Texas)
- Against — None
- BACKGROUND:** Code of Criminal Procedure, art. 55.01 lists the circumstances under which persons can ask to have their criminal records expunged. Under sec. 55.01(a)(1), this may be done if a person is tried and acquitted or convicted and pardoned. Sec. (a)(2) lists other conditions under which an expunction can be granted. CCP art. 55.02 establishes the procedure to be followed for expunction.
- DIGEST:** SB 1916 would establish a process for the automatic expunction of criminal records for persons who were pardoned or who were granted relief on the basis of actual innocence. Trial courts, or the district court if the trial court was not a district court, in which a person was convicted and later pardoned or granted other relief for actual innocence would be required to enter an order of expunction. The order would have to be entered within 30 days of the court receiving notice of the pardon or other relief. The prosecutor would be required to prepare the expunction order for the court's signature.
- The court would have to include in the expunction order a list of each official, agency, or other entity of the state or a political subdivision and

each private entity that there was reason to believe had any record or file that would be subject to an expunction order. Courts also would have to require in the expunction order that the Texas Department of Criminal Justice return to the court all records and files that were subject to the expunction order and delete from its public records all index references to the records and files.

The court would be required to retain the records and files until the statute of limitations had expired for any civil case or proceeding that would relate to the wrongful imprisonment of the person obtaining the expunction order.

The bill would take effect September 1, 2009, and would apply to the expunction of arrest records for an offense for which a person was pardoned or received other relief on the basis of actual innocence before, on, or after that date.

**SUPPORTERS  
SAY:**

SB 1916 would relieve an unnecessary burden on persons who have been pardoned or exonerated for actual innocence after a wrongful conviction. After being pardoned or freed from prison and exonerated of the conviction that sent them to prison, persons face another obstacle in removing records of their arrest from criminal history repositories. Currently, the expunction process for those exonerated on the basis of actual innocence who do not meet the criteria in current law requires going through the court system. This means that exonerees, who often have limited resources, must either pay an attorney to handle the matter or depend on a pro bono attorney. SB 1916 would address this situation by creating a process for the automatic expunction of criminal records for persons pardoned or granted other relief for actual innocence after a wrongful conviction.

Expunction is important to exonerees because having any type of criminal record in a public database can pose significant barriers to housing, employment, schooling, and more. Potential employers and others sometimes may have difficulty reconciling a public database that lists a criminal record with that which an exoneree tells them.

The process that would be established by SB 1916 would be drawn narrowly to apply only to those pardoned or granted other relief from their conviction on the basis of actual innocence. The responsibilities that would be established in the bill would not burden prosecutors or the courts

because there would not be an overwhelming number of these cases. Courts, prosecutors, and the state owe it to those who have been wrongfully convicted to help set the record straight.

Current law does not preserve indefinitely all criminal records, but makes reasoned, limited exceptions to the public's access to these records. This proposal would be another such exception.

**OPPONENTS  
SAY:**

The state should be cautious about any new restrictions on the public's access to criminal history record information. Even after a pardon or other relief, the public may have an interest in accessing this information.