SUBJECT: Duties of law enforcement when an offender misuses a person's identity

COMMITTEE: Law Enforcement — favorable, without amendment

VOTE: 7 ayes — Driver, Garza, Hupp, Burnam, Y. Davis, Hegar, Keel

                0 nays

SENATE VOTE: On final passage, April 3 — voice vote

WITNESSES: No public hearing

BACKGROUND: Under Code of Criminal Procedure, art. 55.01, a person is entitled to have any information that identifies him or her, including the person's name, address, date of birth, driver's license number, and social security number, contained in records and files relating to the arrest of another person expunged if:

                - the information identifying the person asserting the entitlement to expunction was given falsely by the arrested person as the arrested person's identifying information without consent, and
                - the only reason for the identifying information being contained in the arrest records and files of the arrested person is that the information was given falsely by the arrested person.

                A person who is entitled to expunction may file a petition for expunction in a district court for the county in which the petitioner was arrested or in which the person who falsely identified himself or herself as the petitioner was arrested. When the order of expunction is final, the court clerk must send a certified copy of the order to the Department of Public Safety (DPS), which must notify any central federal depository of criminal records with a request that records be destroyed or returned to the court.

                Government Code, sec. 411.0421 requires DPS to create a record of each person who signs a declaration that the person's identity has been used by another person, without consent, to frustrate proper law enforcement, and who files that declaration with DPS. The declaration must include the person's name, social security number, and other identifying information, a statement

that the person's identifying data were used by another person to frustrate law enforcement, and a unique password to verify the person's identity. DPS must ensure that this record, including the password, is available online to any entity authorized to receive information from DPS.

Under current law, a person whose identity has been used falsely by another person arrested for a crime has no way of knowing about it. An innocent person could be stopped by police for a traffic offense and be informed that there was a warrant out for his or her arrest on criminal charges. Similarly, a person interviewing for a job might discover that an arrest record appeared when the prospective employer ran a background check.

DIGEST: SB 566 would require local enforcement, on receipt of information indicating that a person's identifying information was given falsely by a person arrested, to notify the person that:

- his or her identifying information was misused by another person arrested in the county;
- the person could file a declaration with DPS under the Government Code; and
- the person would be entitled to expunction of information contained in criminal records.

Local law enforcement would have to notify DPS regarding the misuse of the identifying information, the actual identity of the person arrested, if known, and whether the agency had been able to notify the person whose identifying information was misused.

A person entitled to expunction of information in records and files could file an application for expunction with the felony prosecutor in the county in which he or she lived. The application would have to be verified and include authenticated fingerprint records of the applicant, personal identifying information, and information regarding the arrest. After verifying the allegations in the application, the prosecutor would have to:

- include on the application information regarding the arrest that was requested of the applicant but was unknown;
- forward a copy of the application to the district court for the county;

- attach to the copy a list of all law enforcement agencies, jails, magistrates, courts, prosecuting attorneys, correctional facilities, and other officials or agencies that were reasonably likely to have records or files containing information that was subject to expunction; and
- ask the court to enter an order directing expunction.

On receipt of the prosecutor's request, the court would have to enter a final order directing expunction, without holding a hearing. When the order was final, DPS would have to notify any central federal depository of criminal records and ask that the depository obliterate all portions of the records that identified the petitioner and substitute for all obliterated portions of the record any available information that identified the person arrested. On receipt of information from a local law enforcement agency about a person's identifying information being given falsely by a person arrested, DPS would have to:

- notify the person whose identity was misused, if the local law enforcement agency was unable to do so:
- take action to ensure that the information in the computerized criminal history system reflected the use of the person's identity as a stolen alias; and
- notify the Texas Department of Criminal Justice (TDCJ) that the person's identifying information may have been used falsely by an inmate in custody.

TDCJ, on receipt of information from DPS that a person's identifying information may have been used falsely by an inmate, would have to make a reasonable effort to identify the inmate's actual identity and to take action to ensure that any information in TDCJ records regarding the inmate reflected the inmate's use of the person's identity as a stolen alias and referred to available information concerning the inmate's actual identity.

SB 566 would repeal Code of Criminal Procedure provisions in regard to the information that a petitioner seeking expunction must include in the petition.

The bill would take effect September 1, 2003.