

- SUBJECT:** Sending notices or orders of expunction by e-mail or fax
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 5 ayes — Keel, Denny, Escobar, Hodge, Reyna
0 nays
4 absent — Riddle, P. Moreno, Pena, Raymond
- WITNESSES:** For — Sheri Woodfin, County and District Clerks Association
Against — None
- BACKGROUND:** Code of Criminal Procedure (CCP), art. 55.02, sec. 2(a) specifies the process for eligible persons to request expunction of criminal records and files. It requires the district court to set a hearing and provide reasonable notice by certified mail, return receipt requested, to each official agency or other entity named in the petition. Once the order of expunction is final, the clerk of the court must send a copy of the order by certified mail, return receipt requested, to the Crime Records Service of the Department of Public Safety (DPS). The clerk also must send a copy of the order by hand delivery or certified mail, return receipt requested, to each official, agency, or other entity of the state designated by the person who is the subject of the order.
- Under Government Code, sec. 411.081(g), when an order of nondisclosure is issued for a person placed on deferred adjudication, the clerk of the court must send a copy of the order by certified mail, return receipt requested, to DPS Crime Records Service. DPS then must send a copy of the order by mail or electronic means to all agencies, officials, and entities of the state and to all central federal depositories of criminal records that there is reason to believe have criminal history record information that is the subject of the order.
- DIGEST:** HB 413 would amend CCP, art. 55.02 to allow a district court to provide reasonable notice on an expunction hearing by sending a secure e-mail or fax transmission to each official agency or other entity named in the petition if requested in writing by the petitioner. HB 413 also would

permit the clerk of the court to send a copy of the final order of expunction by secure e-mail or fax transmission if requested in writing by the person who is the subject of the order.

The bill also would amend Government Code, sec. 411.081 by authorizing the clerk of the court to send final orders of nondisclosure to DPS via secure e-mail or fax transmission. It also specifically would allow DPS to send copies of nondisclosure orders by e-mail or fax to the parties specified in the section.

This bill would take effect September 1, 2005. It would apply to any person seeking the expunction of records regardless of when that person was arrested.

**SUPPORTERS
SAY:**

HB 413 would provide citizens entitled to the expunction of criminal records with a more expeditious means of sealing their records and files. Notices of hearings, final orders, and orders of nondisclosure would arrive sooner via secure e-mail or fax.

The bill would facilitate a better and more efficient administration of justice, as well as advance the criminal justice system toward the realities of the electronic age. The Internet is a very secure and reliable option that is being utilized more regularly for transmission of confidential information by agencies and organizations around Texas and the nation.

District and county clerk offices would save time, manpower, and money on postage that otherwise would have to be paid if the notices and orders were sent by certified mail.

**OPPONENTS
SAY:**

This bill could place the confidentiality of information related to the expunction of criminal records at risk. It would be difficult to design a truly secure and reliable fax or e-mail account system to properly safeguard this information. The possibility that an electronic system could fall prey to a computer virus or hacker is too great to justify the convenience of offering e-mail as an alternative to the safety and reliability of certified mail.