

SUBJECT: Revisions to criminal docket, indictment, and expunction procedures

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Gallego, Christian, Fletcher, Kent, Miklos, Moody, Pierson, Vaught, Vo

0 nays

2 absent — Hodge, Riddle

WITNESSES: For — Sheri Woodfin, County & District Clerk Association; (*Registered, but did not testify*: Mark Mendez, Tarrant County; Chuck Bailey, Texas District and County Clerks)

Against — None

BACKGROUND: Code of Criminal Procedure, art. 17.085 requires a clerk of a court that does not provide online access to the court’s criminal case records to post at a public courthouse notice of the court’s upcoming criminal docket setting at least 48 hours before the court hears the docket.

Under current law, a court may not enter on record a grand jury’s indictment against a defendant until the defendant has been brought into custody or placed under bond. Sometimes the indictment becomes available, or “leaked,” to the public before the court can appropriately enter the indictment into the court record.

Code of Criminal Procedure, art. 55 sets forth the requirements and procedures for a person to obtain an expunction of all records and files related to that person’s arrest or prosecution. An expunction basically erases a person’s offense record and allows the person to deny legally that the arrest or prosecution occurred. A party entitled to an expunction may file an ex parte petition either with the district court in the county where the arrest or offense occurred, or with the attorney who represents the state in felony prosecutions in the county where the person resides. A petition for an expunction also may be filed on behalf of a person entitled to an expunction by the director of the Department of Public Safety or the director’s authorized representative.

The law currently does not require a petition for an expunction to include contact information for any state, federal, or private entity that may have records or files subject to an expunction.

DIGEST:

CSHB 2059 would revise provisions pertaining to public notice of criminal court docket settings, public release of grand jury indictments, and contact information requirements for expunction petitions.

Public notice of criminal court docket settings. CSHB 2059 would require the clerk of a court to post public notice of an upcoming criminal court docket setting as soon as the court notified the clerk of the setting. This requirement would apply only to a clerk of a court that did not provide online access to the court's criminal case records.

Public release of jury indictments. CSHB 2059 would prohibit any public release of a grand jury indictment against a defendant until the defendant was in custody or placed under bond.

Contact information requirements for expunction petitions. CSHB 2059 would require a petition for an expunction to contain the physical and e-mail addresses of any state, federal, or private entity that the petitioner had reason to believe possessed records or information subject to expunction. The requirement would apply to an expunction petition filed by a party as well as a petition filed by the Department of Public Safety.

The bill would apply only to a petition for an expunction filed on or after its September 1, 2009 effective date.

NOTES:

The committee substitute removed a provision in the original bill that would have made changes to the definition of a bail bond and to the procedure for refunding the cash amount of a bail bond to a defendant.