

## **BILL ANALYSIS**

Senate Research Center  
78R9390 PEP-D

C.S.S.B. 566  
By: West  
Criminal Justice  
3/19/2003  
Committee Report (Substituted)

### **DIGEST AND PURPOSE**

Under current Texas law, a person whose identity has been falsely used by another person who has committed a crime has no way of knowing that his or her name was given to law enforcement at the time of the arrest. C.S.S.B. 566 assigns to the local agency which attains identifying information, once the true identity of the person has been determined, the responsibility to contact the person whose identity has been falsely used; requires notification to the identity theft victim that he or she is entitled to an expunction of that criminal record; establishes an application process for a person seeking expunction under this circumstance; and makes other provisions regarding the duties of law enforcement agencies regarding the misuse of a person's identity.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 2, Code of Criminal Procedure, by adding Article 2.28, as follows:

Art. 2.28. DUTIES REGARDING MISUSED IDENTITY. Requires a local law enforcement agency responsible for collecting identification on arrested persons in a county, upon receipt of information to the effect that a person's identifying information was falsely given by a person arrested as the arrested person's identifying information, to take certain actions.

SECTION 2. Amends Sections 2(a) and (b), Article 55.02, Code of Criminal Procedure, as follows:

- (a) Deletes references to Article 55.01(d) regarding entitlement to expunction of records and files. Makes nonsubstantive changes.
- (b) Makes conforming changes.

SECTION 3. Amends Article 55.02, Code of Criminal Procedure, by adding Section 2(a), as follows:

- Sec. 2a. (a) Authorizes a person who is entitled to expunction of information contained in records and files under Article 55.01(d) to file an application for expunction with the attorney representing the state in the prosecution of felonies in the county in which the person resides.
- (b) Requires the application to be verified, include authenticated fingerprint records of the applicant, and include an explanation of why certain information is not included.
  - (c) Requires the attorney representing the state to take certain actions, after verifying the allegations in an application received under Subsection (a).
  - (d) Requires the court, after receiving a request under Subsection (a) and without

holding a hearing on the matter, to enter a final order directing expunction

SECTION 4. Amends Section 3(c), Article 55.02, Code of Criminal Procedure, to require the Texas Department of Public Safety (DPS) to notify any central federal depository of criminal records by any means, including electronic transmission, of the order with an explanation of the effect of the order and a request that the depository, as appropriate, either:

- (1) destroy or return to the court the records in possession of the depository that are subject to the order, including any information with respect to the order; or
- (2) comply with Section 5(f) of this article pertaining to information contained in records and files of a person entitled to expunction under Article 55.01(d).

SECTION 5. Amends Article 60.19, Code of Criminal Procedure, as follows:

Art. 60.19. INFORMATION RELATED TO MISUSED IDENTITY. (a) Requires DPS, after receiving information from a local law enforcement agency, to take certain actions.

(b) Creates new Subsection (b) from existing text.

SECTION 6. Amends Chapter 493, Government Code, by adding Section 493.0155, as follows:

Sec. 493.0155. PROPER IDENTIFICATION OF INMATES USING ALIAS. Requires the Texas Department of Criminal Justice (TDCJ) to take certain actions, after receiving information from DPS under Article 60.19, Code of Criminal Procedure, that a person's identifying information was falsely used by an inmate as the inmate's identifying information, regardless of whether the inmate is in TDCJ custody, is serving a period of supervised release, or has been discharged.

SECTION 7. Repealer: Section 2(e), Article 55.02, Code of Criminal Procedure, (regarding the provision of fingerprints by an identity theft petitioner).

SECTION 8. Effective date: September 1, 2003.

### **SUMMARY OF COMMITTEE CHANGES**

In SECTION 3: Differs from the original by adding the requirement that the application for expunction of information related to the false use of the applicant's identity must include authenticated fingerprint records of the applicant.

In SECTION 5: Differs from the original by adding Subdivision (3) to require DPS to notify the TDCJ that an inmate may have falsely used identifying information.

In SECTION 6: Differs from the original by adding the words "from the Department of Public Safety under Article 60.19, Code of Criminal Procedure" after the words "On receipt of information."