

BILL ANALYSIS

Senate Research Center
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H.B. 1573
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1573 improves and updates the efficiency of certain court procedures and processes for the benefit of the public, the courts, and court personnel.

Currently, a clerk of the court must post public notice of an upcoming criminal court docket setting at least 48 hours before the case is heard. This is often not enough time for the public to be notified or to give the defendant adequate notice to prepare for trial. H.B. 1573 requires the notice to be posted as soon as possible.

An additional pretrial issue arises when the public becomes aware of an indictment before it has been appropriately entered into court records. H.B. 1573 prohibits a grand jury indictment from being made public if a defendant is not in custody or under bond at the time of the presentment of the indictment.

Additionally, there is no requirement for an ex parte petition for the expunction of a criminal record to include certain contact information for certain entities that are believed to have records or files subject to the expunction petition. H.B. 1573 requires applicable physical or e-mail addresses of specified local and state entities and officials of specified federal and private entities and officials that the petitioner has reason to believe have, or that are reasonably likely to have, information related to the person's criminal history records that are subject to expunction. The inclusion of the physical or e-mail address of these entities would better facilitate the process of expunction by allowing staff to more efficiently process the petition.

H.B. 1573 amends current law relating to certain pretrial and post-trial procedures in a criminal case.

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 Article 17.085, Code of Criminal Procedure, to require the clerk of a court that does not provide online Internet access to that court's criminal case records to post in a designated public place in the courthouse notice of a prospective criminal court docket setting as soon as the court notifies the clerk of the setting, rather than post in a designated public place in the courthouse notice of a criminal court docket setting not less than 48 hours before the docket setting.

SECTION 2. Amends Article 20.22, Code of Criminal Procedure, as follows:

Art. 20.22. PRESENTMENT ENTERED OF RECORD. (a) Creates this subsection from existing text. Requires the fact of a presentment of indictment by a grand jury to be entered in the record of the court, rather than be entered upon the record of the court, if the defendant is in custody or under bond, noting briefly the style of the criminal action, the file number of the indictment, and the defendant's name. Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Prohibits the indictment, if the defendant is not in custody or under bond at the time of presentment of indictment, from being made public and requires the entry in the record of the court relating to the indictment to be delayed until the capias is served and the defendant is placed in custody or under bond, rather than requires that the entry in the record of the court relating to said indictment, if the defendant is not in custody or under bond at the time of the presentment of indictment, be delayed until such time as the capias is served and the defendant is placed in custody or under bond.

SECTION 3. Amends Sections 2(b) and (f), Article 55.02, Code of Criminal Procedure, as follows:

(b) Requires that the petition be verified and include the following or an explanation for why one or more of the following is not included:

- (1) the petitioner's full name, sex, race, date of birth, driver's license number, social security number, and address at the time of the arrest;
- (2) the offense charged against the petitioner;
- (3) the date the offense charged against the petitioner was alleged to have been committed;
- (4) the date the petitioner was arrested;
- (5) the name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;
- (6) the name of the agency that arrested the petitioner;
- (7) the case number and court of offense; and
- (8) together with the applicable physical or e-mail addresses, a list of all:
 - (A) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;
 - (B) central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction; and
 - (C) private entities that compile and disseminate for compensation criminal history record information that the petitioner has reason to believe have information related to records or files that are subject to expunction.

(f) Requires that an ex parte petition filed under Subsection (e) be verified and include the following or an explanation for why one or more of the following is not included:

- (1) the person's full name, sex, race, date of birth, driver's license number, social security number, and address at the time of the arrest;
- (2) the offense charged against the person;
- (3) the date the offense charged against the person was alleged to have been committed;

- (4) the date the person was arrested;
- (5) the name of the county where the person was arrested and if the arrest occurred in a municipality, the name of the municipality;
- (6) the name of the agency that arrested the person;
- (7) the case number and court of offense; and
- (8) together with the applicable physical or e-mail addresses, a list of all:
 - (A) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;
 - (B) central federal depositories of criminal records that the person has reason to believe have records or files that are subject to expunction; and
 - (C) private entities that compile and disseminate for compensation criminal history record information that the person has reason to believe have information relating to records or files that are subject to expunction.

SECTION 4. Amends Section 2a(c), Article 55.02, Code of Criminal Procedure, as follows:

- (c) Requires the attorney representing the state, after verifying the allegations in an application received under Subsection (a) (authorizing a person who is entitled to expunction of records and files under Article 55.01(a) or a person who is eligible for expunction of records and files under Article 55.01(b) to file an ex parte petition for expunction in a certain district court for the county), to:
 - (1) include on the application information regarding the arrest that was requested of the applicant but was unknown by the applicant;
 - (2) forward a copy of the application to the district court for the county;
 - (3) together with the applicable physical or e-mail addresses, attach to the copy a list of all:
 - (A) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;
 - (B) central federal depositories of criminal records that are reasonably likely to have records or files containing information that is subject to expunction; and
 - (C) private entities that compile and disseminate for compensation criminal history record information that are reasonably likely to have records or files containing information that is subject to expunction; and
 - (4) request the court to enter an order directing expunction based on an entitlement to expunction under Article 55.01(d) (entitling a person to have any information that identifies the person, 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 certain conditions are met).

SECTION 5. Provides that the changes in law made by this Act in amending Article 55.02, Code of Criminal Procedure, apply to any petition or application for the expunction of arrest records and files that is filed on or after the effective date of this Act, regardless of whether the arrest occurred before, on, or after that date.

SECTION 6. Effective date: September 1, 2011.