

BILL ANALYSIS

S.B. 566
By: West
Law Enforcement
Committee Report (Unamended)

BACKGROUND 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. Senate Bill 566 requires a local law enforcement agency, if informed that a person's identifying information was falsely given by a person arrested as the arrested person's identifying information, to contact the person whose identity has been falsely used and give that person notice of his or her rights. The bill also establishes a process by which a person seeking court-ordered expunction of records can file an application with the district or county attorney. The bill requires the Department of Public Safety (DPS) to notify the victim of the identity theft if local law enforcement is unable to do so, make certain computerized criminal history information reflects the use of the person's identity as a stolen alias, and, when applicable, notify the Texas Department of Criminal Justice (TDCJ) that one of its inmates may be falsely using the person's identity. Finally, the bill requires the TDCJ to take certain steps to ensure proper identification of inmates who are identified as possibly using an alias.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

SECTION 1. Amends Chapter 2, Code of Criminal Procedure, by adding Article 2.28 to require the responsible local law enforcement agency, 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 notify the person that the person's identifying information was misused by another person arrested in the county, that the person may file a declaration with DPS under Section 411.0421, Government Code, and that the person is entitled to expunction of information contained in criminal records and files under Chapter 55, Code of Criminal Procedure. Requires the local law enforcement agencies to notify DPS regarding the misuse of the identifying information, the actual identity of the person arrested, if known by the agency, and whether the agency was able to notify the person whose identifying information was misused.

SECTION 2. Amends Article 55.02, Code of Criminal Procedure to make nonsubstantive and conforming changes.

SECTION 3. Amends Article 55.02, Code of Criminal Procedure, by adding Section 2a, 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 and include specified information about the applicant and the arrest leading to the application or an explanation for any missing information, authenticated fingerprint records of the applicant, and a statement by the applicant that the applicant is not the person arrested and did not ask the person arrested to identify him or herself as the applicant.

(c) Requires the attorney representing the state, after verifying the allegations in an application, to take certain procedural actions to complete the application, forward it to certain agencies, and request the court to enter an expunction order.

(d) Requires the court, after receiving a request under Subsection (c) 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 DPS to notify any central federal depository of criminal records of the order, by any means, including electronic transmission, with an explanation of the effect of the order and a request that the depository, as appropriate, either:

- 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
- comply with Section 5(f) of this article pertaining to information contained in the records and files of a person entitled to expunction under Article 55.01(d).

SECTION 5. Amends Article 60.19, Code of Criminal Procedure, to require DPS, after receiving information from a local law enforcement agency, to provide notice to the person whose identity was misused if the local law enforcement agency was unable to do so, to take action to ensure that the information in the computerized criminal history system reflects 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 falsely used by an inmate while in custody.

SECTION 6. Amends Chapter 493, Government Code, by adding Section 493.0155, to require TDCJ, upon receiving notice from DPS that an inmate may have used another person's identifying information while in custody, to take action to ensure that the information regarding an inmate reflect the inmate's use of the other person's information as a stolen alias and include any information concerning the inmate's actual identity. Requires TDCJ to take action whether the inmate is in TDCJ custody, is serving a period of supervised release, or has been discharged.

SECTION 7. Repeals Section 2(e), Article 55.02, Code of Criminal Procedure, regarding the provision of fingerprints by an identity theft petitioner, the substance of which is added in by SECTION 3 of this bill.

SECTION 8. Effective date.

EFFECTIVE DATE

This Act takes effect September 1, 2003.