

By: Turner

H.B. No. 413

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the manner of providing notice of a petition or order
3 for the expunction or nondisclosure of certain criminal records.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 2, Article 55.02, Code of Criminal
6 Procedure, is amended by amending Subsection (c) and adding
7 Subsection (c-1) to read as follows:

8 (c) The court shall set a hearing on the matter no sooner
9 than thirty days from the filing of the petition and shall give to
10 each official or agency or other entity named in the petition
11 reasonable notice of the hearing [~~to each official or agency or~~
12 ~~other entity named in the petition~~] by:

13 (1) certified mail, return receipt requested; or

14 (2) if requested in writing by the petitioner, secure
15 electronic mail or facsimile transmission.

16 (c-1) An [~~and such~~] entity described by Subsection (c) may
17 be represented by the attorney responsible for providing the entity
18 [~~such agency~~] with legal representation in other matters.

19 SECTION 2. Sections 3(c) and (d), Article 55.02, Code of
20 Criminal Procedure, are amended to read as follows:

21 (c) When the order of expunction is final, the clerk of the
22 court shall send a certified copy of the order [~~by certified mail,~~
23 ~~return receipt requested,~~] to the Crime Records Service of the
24 Department of Public Safety and [~~by hand delivery or certified~~

1 ~~mail, return receipt requested,~~] to each official or agency or
2 other entity of this state or of any political subdivision of this
3 state designated by the person who is the subject of the order. The
4 certified copy of the order must be sent by secure electronic mail
5 or facsimile transmission, if requested in writing by the person
6 who is the subject of the order, or otherwise by certified mail,
7 return receipt requested. In sending the order to an entity
8 designated by the person, the clerk may elect to substitute hand
9 delivery for certified mail under this subsection, but the [The]
10 clerk [~~of the court~~] must receive a receipt for that hand-delivered
11 [~~each~~] order [~~delivered by hand under this subsection~~]. The
12 Department of Public Safety shall notify any central federal
13 depository of criminal records by any means, including secure
14 electronic mail or facsimile transmission, of the order with an
15 explanation of the effect of the order and a request that the
16 depository, as appropriate, either:

17 (1) destroy or return to the court the records in
18 possession of the depository that are subject to the order,
19 including any information with respect to the order; or

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

23 (d) Any [~~All~~] returned receipts received by the clerk from
24 notices of the hearing and copies of the order shall be maintained
25 in the file on the proceedings under this chapter.

26 SECTION 3. Section 411.081, Government Code, is amended by
27 amending Subsection (g) and adding Subsection (g-1) to read as

1 follows:

2 (g) When an order of nondisclosure is issued under this
3 subsection, the clerk of the court shall send to the Crime Records
4 Service of the Department of Public Safety a copy of the order by:

5 (1) certified mail, return receipt requested; or

6 (2) if requested in writing by the petitioner, secure
7 electronic mail or facsimile transmission [~~to the Crime Records~~
8 ~~Service of the Department of Public Safety~~].

9 (g-1) The Department of Public Safety shall send a copy of
10 the order by mail or secure electronic mail or facsimile
11 transmission [~~means~~] to all law enforcement agencies, jails or
12 other detention facilities, magistrates, courts, prosecuting
13 attorneys, correctional facilities, central state depositories of
14 criminal records, and other officials or agencies or other entities
15 of this state or of any political subdivision of this state, and to
16 all central federal depositories of criminal records that there is
17 reason to believe have criminal history record information that is
18 the subject of the order.

19 SECTION 4. (a) The change in law made by this Act to Chapter
20 55, Code of Criminal Procedure, applies to a person seeking
21 expunction of records and files relating to an arrest regardless of
22 whether the arrest occurred before, on, or after the effective date
23 of this Act.

24 (b) The change in law made by this Act to Section 411.081,
25 Government Code, applies to information related to a deferred
26 adjudication or similar procedure described by Subsection (f) of
27 that section, regardless of whether the deferred adjudication or

1 procedure is entered before, on, or after the effective date of this
2 Act.

3 SECTION 5. This Act takes effect September 1, 2005.