

## **BILL ANALYSIS**

H.B. 1303  
By: Pena  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Chapter 55, Article 55.02, Section 2(c)2, Code of Criminal Procedure, specifies that in a matter of expunction, the court shall give reasonable notice of the hearing to each official or agency or other entity by certified mail, return receipt requested; or, *if requested in writing*, by secure electronic mail or facsimile transmission.

Chapter 55, Article 55.02, Section 3(c), Code of Criminal Procedure, specifies that when the order of expunction is final, the clerk of the court shall send a certified copy of the order by certified mail, return receipt requested; or *if requested in writing by the person who is the subject of the order*, by secure electronic mail or facsimile transmission.

Section 411.081(g), Government Code, specifies that when an order of nondisclosure is issued, the clerk of the court shall send to the Crime Records Service of the Department of Public Safety (DPS) a copy of the order by certified mail, return receipt requested; or *if requested in writing by the petitioner*, secure electronic mail or facsimile transmission.

The request in writing is there to ensure that there is a paper trail that the notice was received. However, modern technology has the capability of generating proof of receipt of secure electronic mail.

H.B. 1303 seeks to give each official or agency or other entity named in the petition or order, reasonable notice of the hearing or order by certified mail or secure electronic mail or facsimile transmission.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTION 3 of this bill.

### **ANALYSIS**

House Bill 1303 amends Article 55.02, Section 2(c), Code of Criminal Procedure, by deleting language that required the petitioner to request in writing that notice of a hearing is to be sent by secure electronic mail or facsimile transmission in an application for expunction. The bill provides that notice can be sent either by certified mail, return receipt requested, or secure electronic mail, electronic transmission or facsimile transmission.

The bill amends Article 55.02, Section 3(c), Code of Criminal Procedure, by deleting language that required the petitioner to request in writing that a certified copy of an order of expunction is to be sent by secure electronic mail or facsimile. The bill provides that a copy of the order can be sent either by certified mail, return receipt requested, or secure electronic mail, electronic transmission or facsimile transmission. The bill also provides that DPS is required to notify any central federal depository of criminal records by any means, including secure electronic mail, electronic transmission, or facsimile transmission.

The bill amends the Government Code to provide that not later than the 15th business day after an order of nondisclosure is issued, the clerk of the court must send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission.

The bill also provides that not later than 10 business days after receipt of an order or relevant criminal history record information contained in a certain order of nondisclosure, DPS must seal any criminal history record information maintained by DPS that is the subject of the order. DPS must also send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission. The bill deletes existing language regarding current methods by which DPS sends a copy of the order. The bill also provides that not later than 30 business days after receipt of relevant criminal history record information contained in an order or an order from DPS under Section 411.081(g-1), Government Code, a certain individual or entity must seal any criminal history record information maintained by the individual or entity that is the subject of the order.

H.B. 1303 also requires the director of DPS to adopt rules regarding the minimum standards for the security of secure electronic mail, electronic transmissions, and facsimile transmissions under Section 411.081(g) and Section 411.081(g-1), Government Code. The director is required to consult with the Office of Court Administration of the Texas Judicial System for purposes of adopting these rules. The rules must be adopted not later than January 1, 2008 by DPS.

The change in law made by this Act to Article 55.02, Code of Criminal Procedure, applies to a person seeking expunction of records and files relating to an arrest regardless of whether the arrest occurred before, on, or after the effective date of this Act.

The change in law made by this Act to Section 411.081, Government Code, applies to information related to a deferred adjudication or similar procedure described by Subsection (f) of that section, regardless of whether the deferred adjudication or procedure is entered before, on, or after the effective date of this Act.

Not later than June 1, 2008, a court that issues and transmits orders of nondisclosure as described by Section 411.081, Government Code, as amended by this Act, and the Crime Records Service of the Department of Public Safety must comply with the secure electronic mail, electronic transmission, and facsimile transmission standards adopted by the Department of Public Safety under Section 411.081, Government Code.

#### **EFFECTIVE DATE**

September 1, 2007.