

By: Pena

H.B. No. 1303

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Section 2(c), Article 55.02, Code of Criminal Procedure, is amended to read as follows:

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

(1) certified mail, return receipt requested; or

(2) ~~[if requested in writing by the petitioner,]~~
secure electronic mail, electronic transmission, or facsimile transmission.

SECTION 2. Section 3(c), Article 55.02, Code of Criminal Procedure, is amended to read as follows:

(c) When the order of expunction is final, the clerk of the court shall send a certified copy of the order to the Crime Records Service of the Department of Public Safety and to each official or agency or other entity of this state or of any political subdivision of this state designated by the person who is the subject of the order. The certified copy of the order must be sent by secure electronic mail, electronic transmission, or facsimile transmission~~[, if requested in writing by the person who is the~~

1 ~~subject of the order,~~] or otherwise by certified mail, return
2 receipt requested. In sending the order to an entity designated by
3 the person, the clerk may elect to substitute hand delivery for
4 certified mail under this subsection, but the clerk must receive a
5 receipt for that hand-delivered order. The Department of Public
6 Safety shall notify any central federal depository of criminal
7 records by any means, including secure electronic mail, electronic
8 transmission, or facsimile transmission, of the order with an
9 explanation of the effect of the order and a request that the
10 depository, as appropriate, either:

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

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

17 SECTION 3. Section 411.081(g), Government Code, as amended
18 by Chapters 177 and 1309, Acts of the 79th Legislature, Regular
19 Session, 2005, and Section 411.081(g-1), Government Code, as added
20 by Chapters 177 and 1309, Acts of the 79th Legislature, Regular
21 Session, 2005, are reenacted as Sections 411.081(g), (g-1), (g-1a),
22 and (g-1b) and amended to read as follows:

23 (g) Not later than the 15th business day after the date
24 ~~[When an order of nondisclosure is issued under this subsection,~~
25 ~~the clerk of the court shall send to the Crime Records Service of~~
26 ~~the Department of Public Safety a copy of the order by:~~

27 ~~[(1) certified mail, return receipt requested, or~~

1 ~~[(2) if requested in writing by the petitioner, secure~~
2 ~~electronic mail or facsimile transmission.~~

3 ~~[(g) When]~~ an order of nondisclosure is issued under this
4 section, the clerk of the court shall send all relevant criminal
5 history record information contained in the order or a copy of the
6 order by certified mail, return receipt requested, or secure
7 electronic mail, electronic transmission, or facsimile
8 transmission to the Crime Records Service of the Department of
9 Public Safety.

10 (g-1) Not later than 10 business days after receipt of an
11 ~~[the]~~ order or relevant criminal history record information
12 contained in an order under Subsection (g), the Department of
13 Public Safety shall seal any criminal history record information
14 maintained by the department that is the subject of the order. The
15 department shall also send all relevant criminal history record
16 information contained in the order or a copy of the order by
17 certified mail, return receipt requested, or secure electronic
18 mail, electronic transmission, or facsimile transmission ~~[means]~~
19 to all:

20 (1) law enforcement agencies, jails or other detention
21 facilities, magistrates, courts, prosecuting attorneys,
22 correctional facilities, central state depositories of criminal
23 records, and other officials or agencies or other entities of this
24 state or of any political subdivision of this state;

25 (2) central federal depositories of criminal records
26 that there is reason to believe have criminal history record
27 information that is the subject of the order; and

1 (3) private entities that purchase criminal history
2 record information from the department.

3 (g-1a) The director shall adopt rules regarding minimum
4 standards for the security of secure electronic mail, electronic
5 transmissions, and facsimile transmissions under Subsections (g)
6 and (g-1). In adopting rules under this subsection, the director
7 shall consult with the Office of Court Administration of the Texas
8 Judicial System.

9 (g-1b) [~~(g-1)~~ The Department of Public Safety shall send a
10 copy of the order by mail or secure electronic mail or facsimile
11 transmission to all law enforcement agencies, jails or other
12 detention facilities, magistrates, courts, prosecuting attorneys,
13 correctional facilities, central state depositories of criminal
14 records, and other officials or agencies or other entities of this
15 state or of any political subdivision of this state, and to all
16 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 ~~[(g-1)]~~ Not later than 30 business days after receipt of
20 relevant criminal history record information contained in an order
21 or an order from the Department of Public Safety under Subsection
22 (g-1) [~~(g)~~], an individual or entity described by Subsection (g-1)
23 [~~(g)(1)~~] shall seal any criminal history record information
24 maintained by the individual or entity that is the subject of the
25 order.

26 SECTION 4. (a) The change in law made by this Act to Article
27 55.02, Code of Criminal Procedure, applies to a person seeking

1 expunction of records and files relating to an arrest regardless of
2 whether the arrest occurred before, on, or after the effective date
3 of this Act.

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

10 (c) Not later than January 1, 2008, the Department of Public
11 Safety shall adopt rules concerning the standards for secure
12 electronic mail, electronic transmissions, and facsimile
13 transmissions as required by Section 411.081, Government Code, as
14 amended by this Act.

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

22 SECTION 5. This Act takes effect September 1, 2007.