

AN ACT

relating to certain pretrial and post-trial procedures and testing in a criminal case.

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

SECTION 1. Article 17.085, Code of Criminal Procedure, is amended to read as follows:

Art. 17.085. NOTICE OF APPEARANCE DATE. The clerk of a court that does not provide online Internet access to that court's criminal case records shall 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 ~~[not less than 48 hours before the docket setting]~~.

SECTION 2. Article 20.22, Code of Criminal Procedure, is amended to read as follows:

Art. 20.22. PRESENTMENT ENTERED OF RECORD. (a) The fact of a presentment of indictment by a grand jury shall be entered in ~~[upon]~~ the record of the court, if the defendant is in custody or under bond, noting briefly the style of the criminal action, and ~~[and]~~ the file number of the indictment, and the defendant's name.

(b) If the defendant is not in custody or under bond at the time of the presentment of indictment, the indictment may not be made public and the entry in the record of the court relating to the ~~[said]~~ indictment must ~~[shall]~~ be delayed until ~~[such time as]~~ the capias is served and the defendant is placed in custody or under

1 bond.

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

4 (b) The petition must be verified and must [~~shall~~] include
5 the following or an explanation for why one or more of the following
6 is not included:

7 (1) the petitioner's:

8 (A) full name;

9 (B) sex;

10 (C) race;

11 (D) date of birth;

12 (E) driver's license number;

13 (F) social security number; and

14 (G) address at the time of the arrest;

15 (2) the offense charged against the petitioner;

16 (3) the date the offense charged against the
17 petitioner was alleged to have been committed;

18 (4) the date the petitioner was arrested;

19 (5) the name of the county where the petitioner was
20 arrested and if the arrest occurred in a municipality, the name of
21 the municipality;

22 (6) the name of the agency that arrested the
23 petitioner;

24 (7) the case number and court of offense; and

25 (8) together with the applicable physical or e-mail
26 addresses, a list of all:

27 (A) law enforcement agencies, jails or other

1 detention facilities, magistrates, courts, prosecuting attorneys,
2 correctional facilities, central state depositories of criminal
3 records, and other officials or agencies or other entities of this
4 state or of any political subdivision of this state;

5 (B) central federal depositories of criminal
6 records that the petitioner has reason to believe have records or
7 files that are subject to expunction; and

8 (C) private entities that compile and
9 disseminate for compensation criminal history record information
10 that the petitioner has reason to believe have information related
11 to records or files that are subject to expunction.

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

15 (1) the person's:

16 (A) full name;

17 (B) sex;

18 (C) race;

19 (D) date of birth;

20 (E) driver's license number;

21 (F) social security number; and

22 (G) address at the time of the arrest;

23 (2) the offense charged against the person;

24 (3) the date the offense charged against the person
25 was alleged to have been committed;

26 (4) the date the person was arrested;

27 (5) the name of the county where the person was

1 arrested and if the arrest occurred in a municipality, the name of
2 the municipality;

3 (6) the name of the agency that arrested the person;

4 (7) the case number and court of offense; and

5 (8) together with the applicable physical or e-mail
6 addresses, a list of all:

7 (A) law enforcement agencies, jails or other
8 detention facilities, magistrates, courts, prosecuting attorneys,
9 correctional facilities, central state depositories of criminal
10 records, and other officials or agencies or other entities of this
11 state or of any political subdivision of this state;

12 (B) central federal depositories of criminal
13 records that the person has reason to believe have records or files
14 that are subject to expunction; and

15 (C) private entities that compile and
16 disseminate for compensation criminal history record information
17 that the person has reason to believe have information relating to
18 records or files that are subject to expunction.

19 SECTION 4. Section 2a(c), Article 55.02, Code of Criminal
20 Procedure, is amended to read as follows:

21 (c) After verifying the allegations in an application
22 received under Subsection (a), the attorney representing the state
23 shall:

24 (1) include on the application information regarding
25 the arrest that was requested of the applicant but was unknown by
26 the applicant;

27 (2) forward a copy of the application to the district

1 court for the county;

2 (3) together with the applicable physical or e-mail
3 addresses, attach to the copy a list of all:

4 (A) law enforcement agencies, jails or other
5 detention facilities, magistrates, courts, prosecuting attorneys,
6 correctional facilities, central state depositories of criminal
7 records, and other officials or agencies or other entities of this
8 state or of any political subdivision of this state;

9 (B) central federal depositories of criminal
10 records that are reasonably likely to have records or files
11 containing information that is subject to expunction; and

12 (C) private entities that compile and
13 disseminate for compensation criminal history record information
14 that are reasonably likely to have records or files containing
15 information that is subject to expunction; and

16 (4) request the court to enter an order directing
17 expunction based on an entitlement to expunction under Article
18 55.01(d).

19 SECTION 5. Article 64.01, Code of Criminal Procedure, is
20 amended by amending Subsections (a) and (b) and adding Subsection
21 (a-1) to read as follows:

22 (a) In this section, "biological material":

23 (1) means an item that is in possession of the state
24 and that contains blood, semen, hair, saliva, skin tissue or cells,
25 finger nail scrapings, bone, bodily fluids, or other identifiable
26 biological evidence that may be suitable for forensic DNA testing;
27 and

1 (2) includes the contents of a sexual assault evidence
2 collection kit.

3 (a-1) A convicted person may submit to the convicting court
4 a motion for forensic DNA testing of evidence containing biological
5 material. The motion must be accompanied by an affidavit, sworn to
6 by the convicted person, containing statements of fact in support
7 of the motion.

8 (b) The motion may request forensic DNA testing only of
9 evidence described by Subsection (a-1) [~~(a)~~] that was secured in
10 relation to the offense that is the basis of the challenged
11 conviction and was in the possession of the state during the trial
12 of the offense, but:

13 (1) was not previously subjected to DNA testing[~~+~~
14 ~~[(A) because DNA testing was:~~
15 ~~[(i) not available, or~~
16 ~~[(ii) available, but not technologically~~
17 ~~capable of providing probative results, or~~
18 ~~[(B) through no fault of the convicted person,~~
19 ~~for reasons that are of a nature such that the interests of justice~~
20 ~~require DNA testing]; or~~

21 (2) although previously subjected to DNA testing, can
22 be subjected to testing with newer testing techniques that provide
23 a reasonable likelihood of results that are more accurate and
24 probative than the results of the previous test.

25 SECTION 6. Chapter 64, Code of Criminal Procedure, is
26 amended by adding Article 64.035 to read as follows:

27 Art. 64.035. UNIDENTIFIED DNA PROFILES. If an analyzed

1 sample meets the applicable requirements of state or federal
2 submission policies, on completion of the testing under Article
3 64.03, the convicting court shall order any unidentified DNA
4 profile to be compared with the DNA profiles in:

5 (1) the DNA database established by the Federal Bureau
6 of Investigation; and

7 (2) the DNA database maintained by the Department of
8 Public Safety under Subchapter G, Chapter 411, Government Code.

9 SECTION 7. Article 64.04, Code of Criminal Procedure, is
10 amended to read as follows:

11 Art. 64.04. FINDING. After examining the results of
12 testing under Article 64.03 and any comparison of a DNA profile
13 under Article 64.035, the convicting court shall hold a hearing and
14 make a finding as to whether, had the results been available during
15 the trial of the offense, it is reasonably probable that the person
16 would not have been convicted.

17 SECTION 8. The changes in law made by this Act in amending
18 Article 55.02, Code of Criminal Procedure, apply to any petition or
19 application for the expunction of arrest records and files that is
20 filed on or after the effective date of this Act, regardless of
21 whether the arrest occurred before, on, or after that date.

22 SECTION 9. The change in law made by this Act in amending
23 Chapter 64, Code of Criminal Procedure, applies to a motion for
24 forensic DNA testing filed on or after the effective date of this
25 Act. A motion for forensic DNA testing filed before the effective
26 date of this Act is covered by the law in effect at the time the
27 motion was filed, and the former law is continued in effect for that

1 purpose.

2 SECTION 10. This Act takes effect September 1, 2011.

H.B. No. 1573

President of the Senate

Speaker of the House

I certify that H.B. No. 1573 was passed by the House on April 7, 2011, by the following vote: Yeas 144, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1573 on May 21, 2011, by the following vote: Yeas 140, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1573 was passed by the Senate, with amendments, on May 18, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor