

By: Gallego

H.B. No. 3777

A BILL TO BE ENTITLED

AN ACT

relating to collection, storage, and distribution of criminal history record information; providing penalties.

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

SECTION 1. Articles 60.01 through 60.21, Code of Criminal Procedure, are designated as Subchapter A, Chapter 60, Code of Criminal Procedure, and a heading is added to Subchapter A to read as follows:

SUBCHAPTER A. INFORMATION SYSTEMS AND DATA COLLECTION

SECTION 2. Article 60.01, Code of Criminal Procedure, is amended to read as follows:

Art. 60.01. DEFINITIONS. In this subchapter [~~chapter~~]:

(1) "Administration of criminal justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of an offender. The term includes criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(2) "Appeal" means the review of a decision of a lower court by a superior court other than by collateral attack.

(3) "Computerized criminal history system" means the data base containing arrest, disposition, and other criminal history maintained by the Department of Public Safety.

1 (4) "Corrections tracking system" means the data base
2 maintained by the Texas Department of Criminal Justice on all
3 offenders under its supervision.

4 (5) "Council" means the Criminal Justice Policy
5 Council.

6 (6) "Criminal justice agency" means a federal or state
7 agency that is engaged in the administration of criminal justice
8 under a statute or executive order and allocates a substantial part
9 of its annual budget to the administration of criminal justice.

10 (7) "Criminal justice information system" means the
11 computerized criminal history system and the corrections tracking
12 system.

13 (8) "Disposition" means an action that results in the
14 termination, transfer to another jurisdiction, or indeterminate
15 suspension of the prosecution of a criminal charge.

16 (9) "Incident number" means a unique number assigned
17 to a specific person during a specific arrest.

18 (10) "Offender" means any person who is assigned an
19 incident number.

20 (11) "Offense code" means a numeric code for each
21 offense category.

22 (12) "Rejected case" means:

23 (A) a charge that, after the arrest of the
24 offender, the prosecutor declines to include in an information or
25 present to a grand jury; or

26 (B) an information or indictment that, after the
27 arrest of the offender, the prosecutor refuses to prosecute.

1 (13) "Release" means the termination of jurisdiction
2 over an individual by the criminal justice system.

3 (14) "State identification number" means a unique
4 number assigned by the Department of Public Safety to each person
5 whose name appears in the criminal justice information system.

6 (15) "Uniform incident fingerprint card" means a
7 multiple part form containing a unique incident number with space
8 for information relating to the charge or charges for which a person
9 is being arrested, the person's fingerprints, and other information
10 relevant to the arrest.

11 (16) "Electronic means" means the transmission of data
12 between word processors, data processors, or similar automated
13 information equipment over dedicated cables, commercial lines, or
14 other similar methods of transmission.

15 SECTION 3. Article 60.02(d), Code of Criminal Procedure, is
16 amended to read as follows:

17 (d) The data bases must contain the information required by
18 this subchapter [~~chapter~~].

19 SECTION 4. Article 60.04(b), Code of Criminal Procedure, is
20 amended to read as follows:

21 (b) A discrete submission of information under any article
22 of this subchapter [~~chapter~~] must contain, in conjunction with
23 information required, the defendant's name and state
24 identification number.

25 SECTION 5. Article 60.06(a), Code of Criminal Procedure, is
26 amended to read as follows:

27 (a) Each criminal justice agency shall:

1 (1) compile and maintain records needed for reporting
2 data required by the Texas Department of Criminal Justice and the
3 Department of Public Safety;

4 (2) transmit to the Texas Department of Criminal
5 Justice and the Department of Public Safety, when and in the manner
6 the Texas Department of Criminal Justice and the Department of
7 Public Safety direct, all data required by the Texas Department of
8 Criminal Justice and the Department of Public Safety;

9 (3) give the Department of Public Safety and the Texas
10 Department of Criminal Justice or their accredited agents access to
11 the agency for the purpose of inspection to determine the
12 completeness and accuracy of data reported;

13 (4) cooperate with the Department of Public Safety and
14 the Texas Department of Criminal Justice so that the Department of
15 Public Safety and the Texas Department of Criminal Justice may
16 properly and efficiently perform their duties under this subchapter
17 [~~chapter~~]; and

18 (5) cooperate with the Department of Public Safety and
19 the Texas Department of Criminal Justice to identify and eliminate
20 redundant reporting of information to the criminal justice
21 information system.

22 SECTION 6. Article 60.08(d), Code of Criminal Procedure, is
23 amended to read as follows:

24 (d) Except as otherwise required by applicable state laws or
25 regulations, information or data required by this subchapter
26 [~~chapter~~] to be reported to the Texas Department of Criminal
27 Justice or the Department of Public Safety shall be reported

1 promptly but not later than the 30th day after the date on which the
2 information or data is received by the agency responsible for
3 reporting it except in the case of an arrest. An offender's arrest
4 shall be reported to the Department of Public Safety not later than
5 the seventh day after the date of the arrest.

6 SECTION 7. Article 60.21(c), Code of Criminal Procedure, is
7 amended to read as follows:

8 (c) The report described by Subsection (b)(2) must contain a
9 disposition completeness percentage for each county in this
10 state. For purposes of this subsection, "disposition completeness
11 percentage" means the percentage of arrest charges a county reports
12 to the Department of Public Safety to be entered in the computerized
13 criminal history system under this subchapter [~~chapter~~] that were
14 brought against a person in the county for which a disposition has
15 been subsequently reported and entered into the computerized
16 criminal history system.

17 SECTION 8. Chapter 60, Code of Criminal Procedure, is
18 amended by adding Subchapter B to read as follows:

19 SUBCHAPTER B. PROVIDERS OF CRIMINAL
20 HISTORY RECORD INFORMATION

21 Art. 60.51. DEFINITIONS. In this subchapter:

22 (1) "Department" means the Department of Public
23 Safety.

24 (2) "Fee" means anything of value, including valuable
25 consideration or a service or the promise of valuable consideration
26 or a service, directly or indirectly received by a provider of
27 criminal history record information as payment for the information.

1 (3) "License" means a license under this subchapter to
2 distribute criminal history record information.

3 Art. 60.52. LICENSE REQUIRED. (a) A person may not
4 distribute criminal history record information for a fee unless the
5 person holds a license.

6 (b) The department shall adopt rules that:

7 (1) establish the requirements for a person to be
8 licensed to engage in the business of distributing criminal history
9 record information for a fee; and

10 (2) govern the administration of this subchapter.

11 Art. 60.53. LICENSE APPLICATION. The department by rule
12 shall determine the types of information to be included in an
13 application for a license on a form prescribed by the director.

14 Art. 60.54. APPLICATION FEE. The department may impose a
15 fee for a license in an amount sufficient to cover the costs
16 incurred by the department in administering this subchapter.

17 Art. 60.55. DENIAL OF APPLICATION; NOTICE. (a) The
18 department may deny an application for a license if the applicant
19 has previously had a license issued under this subchapter revoked.

20 (b) The department shall send written notice of the decision
21 to the applicant at the address shown on the application by
22 certified mail, return receipt requested. The notice must state
23 the reason for the department's decision.

24 Art. 60.56. TERM OF LICENSE; NOTICE OF EXPIRATION. (a) A
25 license is valid for the period set by the department.

26 (b) Not later than the 30th day before the expiration date
27 of a person's license, the department shall send written notice of

1 the impending license expiration to the person at the person's last
2 known address according to the department's records.

3 Art. 60.57. PROCEDURE FOR RENEWAL. (a) A person may apply
4 to the department to renew the person's license. The application
5 for renewal must be:

6 (1) made on a form approved by the department;

7 (2) submitted to the department before the expiration
8 date of the license; and

9 (3) accompanied by a nonrefundable fee.

10 (b) A person whose license expires and is not renewed under
11 this article may apply for a new license under Article 60.53.

12 Art. 60.58. PERIODIC INSPECTIONS. (a) The department may
13 enter and inspect at any time during business hours:

14 (1) the place of business of any person regulated
15 under this subchapter; or

16 (2) any place in which the department has reasonable
17 cause to believe that a person is violating this subchapter or a
18 department rule or order.

19 (b) At least once every two years, the department shall
20 inspect the place of business of each license holder.

21 (c) The department shall conduct additional inspections
22 based on a schedule of risk-based inspections using the following
23 criteria:

24 (1) any history of violations involving the business;
25 and

26 (2) any other factor determined by the department by
27 rule.

1 (d) The license holder shall pay a fee for each risk-based
2 inspection performed under Subsection (c). The department by rule
3 shall set the amount of the fee.

4 Art. 60.59. PERSONNEL. The department may employ personnel
5 necessary to administer and enforce this subchapter.

6 Art. 60.60. DISTRIBUTION OF CERTAIN CRIMINAL HISTORY RECORD
7 INFORMATION. A person may not compile or distribute criminal
8 history record information for which the person has received notice
9 that:

10 (1) an order of expunction has been issued under
11 Article 55.02, Code of Criminal Procedure; or

12 (2) an order of nondisclosure has been issued under
13 Section 411.081(d) or (f-1), Government Code.

14 Art. 60.61. DISCIPLINARY ACTION. (a) The department may
15 suspend or revoke a license or place the license holder on probation
16 for a violation of this subchapter or a rule adopted under this
17 subchapter.

18 (b) A proceeding under this article is subject to Chapter
19 2001, Government Code.

20 Art. 60.62. CIVIL PENALTY. (a) Except as provided by
21 Subsection (b), a person who violates this subchapter or a rule
22 adopted under this subchapter is liable to the state for a civil
23 penalty in an amount not to exceed \$100 for each violation.

24 (b) The department may issue a warning to a person for the
25 first violation of Article 60.60. After receiving a warning for the
26 first violation, the person is liable to the state for a civil
27 penalty not to exceed \$1,000 for each subsequent violation.

1 (c) The attorney general or an appropriate prosecuting
2 attorney may sue to collect a civil penalty under this article.

3 (d) A civil penalty collected under this article shall be
4 deposited in the state treasury to the credit of the general revenue
5 fund.

6 Art. 60.63. ADMINISTRATIVE PENALTY. (a) The department may
7 impose an administrative penalty on a person regardless of whether
8 the person holds a license if the person violates this subchapter or
9 a rule adopted under this subchapter.

10 (b) The amount of the penalty may not exceed \$100, and each
11 day a violation continues or occurs is a separate violation for the
12 purpose of imposing a penalty. The amount shall be based on:

13 (1) the seriousness of the violation, including the
14 nature, circumstances, extent, and gravity of the violation;

15 (2) the harm caused by the violation;

16 (3) the history of previous violations;

17 (4) the amount necessary to deter a future violation;

18 (5) efforts to correct the violation; and

19 (6) any other matter that justice may require.

20 (c) The enforcement of the penalty may be stayed during the
21 time the order is under judicial review if the person pays the
22 penalty to the clerk of the court or files a supersedeas bond with
23 the court in the amount of the penalty. A person who cannot afford
24 to pay the penalty or file the bond may stay the enforcement by
25 filing an affidavit in the manner required by the Texas Rules of
26 Civil Procedure for a party who cannot afford to file security for
27 costs, subject to the right of the board to contest the affidavit as

1 provided by those rules.

2 (d) The attorney general may sue to collect the penalty.

3 (e) A proceeding to impose the penalty is a contested case
4 under Chapter 2001, Government Code.

5 SECTION 9. (a) Except as provided by Subsection (b) of this
6 section, this Act takes effect September 1, 2011.

7 (b) Articles 60.52(a), 60.61, 60.62, and 60.63, Code of
8 Criminal Procedure, as added by this Act, take effect January 1,
9 2012.