| **House Bill 1573**Senate AmendmentsSection-by-Section Analysis |
| --- |
| HOUSE VERSION | SENATE VERSION (IE) | CONFERENCE |
| 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 1. Same as House version. |  |
| 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~~] 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 bond. | SECTION 2. Same as House version. |  |
| SECTION 3. Sections 2(b) and (f), Article 55.02, Code of Criminal Procedure, are amended to read as follows:(b) The petition must be verified and must [~~shall~~] include the following or an explanation for why one or more of the following is not included:(1) the petitioner's:(A) full name;(B) sex;(C) race;(D) date of birth;(E) driver's license number;(F) social security number; and(G) address at the time of the arrest;(2) the offense charged against the petitioner;(3) the date the offense charged against the petitioner was alleged to have been committed;(4) the date the petitioner was arrested;(5) the name of the county where the petitioner was arrested and if the arrest occurred in a municipality, the name of the municipality;(6) the name of the agency that arrested the petitioner;(7) the case number and court of offense; and(8) together with the applicable physical or e-mail addresses, a list of all:(A) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;(B) central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction; and(C) private entities that compile and disseminate for compensation criminal history record information that the petitioner has reason to believe have information related to records or files that are subject to expunction.(f) An ex parte petition filed under Subsection (e) must be verified and must include the following or an explanation for why one or more of the following is not included:(1) the person's:(A) full name;(B) sex;(C) race;(D) date of birth;(E) driver's license number;(F) social security number; and(G) address at the time of the arrest;(2) the offense charged against the person;(3) the date the offense charged against the person was alleged to have been committed;(4) the date the person was arrested;(5) the name of the county where the person was arrested and if the arrest occurred in a municipality, the name of the municipality;(6) the name of the agency that arrested the person;(7) the case number and court of offense; and(8) together with the applicable physical or e-mail addresses, a list of all:(A) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;(B) central federal depositories of criminal records that the person has reason to believe have records or files that are subject to expunction; and(C) private entities that compile and disseminate for compensation criminal history record information that the person has reason to believe have information relating to records or files that are subject to expunction. | SECTION 3. Same as House version. |  |
| SECTION 4. Section 2a(c), Article 55.02, Code of Criminal Procedure, is amended to read as follows:(c) After verifying the allegations in an application received under Subsection (a), the attorney representing the state shall:(1) include on the application information regarding the arrest that was requested of the applicant but was unknown by the applicant;(2) forward a copy of the application to the district court for the county;(3) together with the applicable physical or e-mail addresses, attach to the copy a list of all:(A) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;(B) central federal depositories of criminal records that are reasonably likely to have records or files containing information that is subject to expunction; and(C) private entities that compile and disseminate for compensation criminal history record information that are reasonably likely to have records or files containing information that is subject to expunction; and(4) request the court to enter an order directing expunction based on an entitlement to expunction under Article 55.01(d). | SECTION 4. Same as House version. |  |
| No equivalent provision. | SECTION \_\_. Article 64.01, Code of Criminal Procedure, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:(a) In this section, "biological material":(1) means an item that is in possession of the state and that contains blood, semen, hair, saliva, skin tissue or cells, fingernail scrapings, bone, bodily fluids, or other identifiable biological evidence that may be suitable for forensic DNA testing; and(2) includes the contents of a sexual assault evidence collection kit.(a-1) A convicted person may submit to the convicting court a motion for forensic DNA testing of evidence containing biological material. The motion must be accompanied by an affidavit, sworn to by the convicted person, containing statements of fact in support of the motion.(b) The motion may request forensic DNA testing only of evidence described by Subsection (a-1) [~~(a)~~] that was secured in relation to the offense that is the basis of the challenged conviction and was in the possession of the state during the trial of the offense, but:(1) was not previously subjected to DNA testing[~~:~~[~~(A) because DNA testing was:~~[~~(i) not available; or~~[~~(ii) available, but not technologically capable of providing probative results; or~~[~~(B) through no fault of the convicted person, for reasons that are of a nature such that the interests of justice require DNA testing~~]; or(2) although previously subjected to DNA testing, can be subjected to testing with newer testing techniques that provide a reasonable likelihood of results that are more accurate and probative than the results of the previous test. [FA1] |  |
| No equivalent provision. | SECTION \_\_. Chapter 64, Code of Criminal Procedure, is amended by adding Article 64.035 to read as follows:Art. 64.035. UNIDENTIFIED DNA PROFILES. If an analyzed sample meets the applicable requirements of state or federal submission policies, on completion of the testing under Article 64.03, the convicting court shall order any unidentified DNA profile to be compared with the DNA profiles in:(1) the DNA database established by the Federal Bureau of Investigation; and(2) the DNA database maintained by the Department of Public Safety under Subchapter G, Chapter 411, Government Code. [FA1] |  |
| No equivalent provision. | SECTION \_\_. Article 64.04, Code of Criminal Procedure, is amended to read as follows:Art. 64.04. FINDING. After examining the results of testing under Article 64.03 and any comparison of a DNA profile under Article 64.035, the convicting court shall hold a hearing and make a finding as to whether, had the results been available during the trial of the offense, it is reasonably probable that the person would not have been convicted. [FA1] |  |
| No equivalent provision. | SECTION \_\_. The change in law made by this Act in amending Chapter 64, Code of Criminal Procedure, applies to a motion for forensic DNA testing filed on or after the effective date of this Act. A motion for forensic DNA testing filed before the effective date of this Act is covered by the law in effect at the time the motion was filed, and the former law is continued in effect for that purpose. [FA1] |  |
| SECTION 5. The changes in law made by this Act in amending Article 55.02, Code of Criminal Procedure, apply to any petition or application for the expunction of arrest records and files that is filed on or after the effective date of this Act, regardless of whether the arrest occurred before, on, or after that date. | SECTION 5. Same as House version. |  |
| SECTION 6. This Act takes effect September 1, 2011. | SECTION 6. Same as House version. |  |