

- SUBJECT:** Sending notice or final orders of expunction by electronic transmission
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 6 ayes — Peña, Vaught, Riddle, Escobar, Mallory Caraway, Pierson
0 nays
3 absent — Hodge, Moreno, Talton
- WITNESSES:** For — W. Clyde Lemon, Charles Bacarisse, Harris County District Court; (*Registered, but did not testify:* Kristin Etter, Texas Criminal Defense Lawyers Association; Kevin Petroff, Harris County District Attorney's Office; Cathy Sisk, Harris County Commissioners Court; Joy Streater, County/District Clerks Association; Latonia D. Wilson)

Against — None

On — Jim Bethke, Office of Court Administration
- BACKGROUND:** Code of Criminal Procedure, art. 55.02 outlines the procedures courts use when setting hearings on petitions for the expunction of criminal records. Section 2(c) requires courts to give notice of the hearing by certified mail or — if requested in writing by the person asking for the expunction — by secure electronic mail or facsimile.

Section 3(c) requires courts to send certified copies of final expunction orders to the Department of Public Safety (DPS) and other entities by certified mail or — if requested in writing by the person whose record is being expunged — by electronic mail or facsimile.

Government Code, sec. 411.081 outlines the handling by DPS of orders of nondisclosure, which prohibit criminal justice agencies from disclosing to the public criminal history record information related to offenses for which a person was placed on deferred adjudication and then received as discharge and dismissal. Court clerks are required to send orders of nondisclosure to DPS by certified mail — or if requested in writing by the person whose record is being expunged — by electronic mail or facsimile.

DIGEST:

HB 1303 would delete the requirement that a petitioner whose record was the subject of expunction proceedings make a request in writing before transmissions regarding a notice of hearing or a final order could be made electronically. The bill would retain a provision that an expunction notice of hearing or final order could be sent by certified mail, return receipt requested, but would add an electronic transmission, along with secure electronic mail or facsimile transmission, as current law, as another means by which courts would give each official, agency, or other entity named in the petition notice of expunction hearings or final orders.

The bill would establish a deadline of 15 business days by which court clerks would have to send information to DPS concerning orders of nondisclosure. Courts and DPS would be able to send information about orders of nondisclosure and all relevant criminal history record information contained in a nondisclosure order by certified mail, return receipt requested. In addition, courts or DPS could transmit these documents by secure electronic transfer or by secure electronic mail or facsimile.

DPS would adopt rules regarding minimum security standards for secure electronic mail, electronic transmissions, and facsimile transmissions of nondisclosure orders and all relevant criminal history record information contained in such an order. DPS would have to consult with the Office of Court Administration when developing the security rules and would have to adopt the rules by January 1, 2008. Courts and the crime records service of DPS would have until June 1, 2008, to comply with the rules.

The bill would take effect September 1, 2007. It would apply to any person seeking the expunction of records and files regardless of when that person was arrested and to a deferred adjudication or similar procedure regardless of when it was entered.

SUPPORTERS
SAY:

HB 1303 would allow another electronic means by which court clerks could transmit notices of hearing or final orders in expunction proceedings, as well as nondisclosure orders and all relevant criminal history record information contained in such orders. By permitting a secure electronic transmission of these orders from criminal court proceedings, the bill would allow a more efficient and less expensive administration of justice and bring the criminal justice system more in-line with the electronic age. Authorizing secure electronic transfers would save district and county clerk's offices time, employee labor, and money.

Requiring a person who was subject to these proceedings to request in writing secure electronic mail or fax transmissions would not be necessary now that technology can provide a record of these transmissions. The written request originally was included in statute to ensure a paper trail that notice was received. However, since technology now can generate such a record, this provision should be deleted to reduce paper records and expedite notice.

In 2005, the 79th Legislature enacted HB 413 by Turner, which initially provided citizens entitled to expunction of criminal records with a prompter means of sealing their records and fines. HB 1303 would update the electronic methods authorized in that bill and further reduce paperwork. The bill would be a good government approach to expanded use of the Internet for secure and reliable transmission of confidential information. By authorizing DPS to develop rules regarding minimum security standards for secure transmissions, the bill would create a higher level of public confidence.

OPPONENTS
SAY:

HB 1303 would create more confidence in the security of transmissions if it required the development of rules, perhaps by the Office of Court Administration, relating to minimum security standards for transmitting notices of hearings and final orders in expunction proceedings. Although certified mail is much slower and more expensive, it offers greater security than secure electronic transmissions that could become prey to computer hackers.

NOTES:

The companion bill, SB 1294 by West, has been referred to the Senate Criminal Justice Committee.