

- SUBJECT:** Providing notice of the release of an offender to witnesses
- COMMITTEE:** Criminal Jurisprudence — committee substitute recommended
- VOTE:** 5 ayes — Pena, Vaught, Riddle, Escobar, Mallory Caraway
0 nays
1 present not voting — Hodge
3 absent — Moreno, Pierson, Talton
- WITNESSES:** For — (*Registered, but did not testify:* Torie Camp, Texas Association Against Sexual Assault)
Against — None
On — Raven Kazen, Texas Department of Criminal Justice, Victim Services Division
- BACKGROUND:** Code of Criminal Procedure, secs. 56.11 and 56.12 require the Texas Department of Criminal Justice (TDCJ) or a sheriff with custody of offenders who have committed certain kinds of crimes to notify the victims of the offense when the offenders:
- complete their sentences and are released;
 - escape from a correctional facility; or
 - are transferred from TDCJ's custody to the custody of local law enforcement or vice versa.
- TDCJ also must notify local law enforcement officials of the county in which a victim resides when offenders are released or escape.
- TDCJ and sheriffs are required to notify victims of offenders who were sentenced for:
- a Penal Code, title 5 "offense against the person," which is punishable by a felony;
 - certain sexually based offenses;

- aggravated kidnapping;
- burglary with intent to commit a felony;
- an offense involving family violence;
- stalking; or
- a violation of a protective order or magistrate's order.

A victim desiring notification of the offender's release must provide TDCJ or the local sheriff, as appropriate, with the address and telephone number of the victim or other person through whom the victim may be contacted and must notify TDCJ or the sheriff of any change in this contact information. The information is privileged and confidential.

DIGEST:

CSHB 963 would amend Code of Criminal Procedure, sec. 56.11 to require TDCJ or a local sheriff to notify a witness who testified against the offender at the trial in which the offender was convicted when the offender was released, escaped, or transferred between TDCJ and another law enforcement agency. The bill also would require notification of local law enforcement in the county where the witnesses reside.

The bill would require TDCJ or the local sheriff to give notice of release or escape by e-mail, if possible. It would require a victim or witness who requested such notification to provide a current e-mail address in addition to a mailing address and telephone number. An attempt by TDCJ or a sheriff to give notice to a victim or witness at the last known e-mail address and mailing address would constitute a reasonable attempt to give notice.

TDCJ would be required to set up a computerized database by March 1, 2008, to track offenders. This database would have to allow Internet access to information by September 1, 2008, for victims and witnesses who were entitled to notice of offender release, escape, or transfer.

CSHB 963 also would require prosecutors to notify victims and witnesses in writing immediately following conviction of an offender of their right to receive notice of the offender's release.

The bill would take effect September 1, 2007, and would apply only those who escape or were released on or after that date.

**SUPPORTERS
SAY:**

CSHB 963 is needed to protect witnesses. Notification of witnesses is just as important as notification of victims because witnesses who testified against an offender are at risk of confrontation with or retaliation from offenders. Notifying witnesses and local law enforcement in advance of the offender's release would provide them a chance to prepare for the possible re-entrance of the offender back into their lives.

Expanded notification would not be a significant burden on TDCJ, sheriffs, or prosecutors. TDCJ and sheriffs already have systems in place for the notification of victims, and it would not be a significant increase in their work loads to add witnesses as well.

E-mail is rapidly replacing postal mail as a method of communication because it can be faster, cheaper and more convenient. Consumers expect the option of e-mail communication when dealing with the private sector, and government agencies should provide the same convenience. By giving victims and witnesses the option to receive notification by e-mail, CSHB 963 would move government closer to cutting-edge communication with the citizenry.

Setting up a system of e-mail notification would not be difficult to implement, and entities as large as TDCJ should be able to absorb any associated costs. Implementing the computerized database would not be difficult for TDCJ because it already maintains one that tracks offenders. Parts of that database already are accessible to the public on TDCJ's website, and it would not be a significant burden to alter the website to comply with CSHB 963. Many sheriffs contract with outside vendors for notification services. Any start-up costs associated with the e-mail notification faced by vendors or sheriff officers should not be significant, according to the fiscal note.

TDCJ or the sheriffs would not be required to notify witnesses or victims by e-mail even if the program participant requested that method. By stipulating that government agencies would only need to provide e-mail notification when possible, TDCJ, sheriffs, and their vendors would have time to fully develop and implant an e-mail notification program. A floor amendment could clarify what constitutes a reasonable attempt to give notice by stating that an attempt to notify that was made at the last known mailing address and, if possible, by e-mail, would be reasonable.

While prosecutors could have some costs associated with informing victims and witnesses of their right to notification, it would not be excessive. The duty to inform victims and witnesses likely could be discharged through the distribution of a standardized form. A floor amendment that would remove the duty to notify witnesses who testified as part of their official or professional duties would make sure that only the witnesses who might need notification would be specifically informed of their right to it. CSHB 963 could be further amended so that prosecutors could notify victims and witnesses prior to conviction. This early notification that the program exists might encourage hesitant witnesses to testify.

OPPONENTS
SAY:

CSHB 963 would expand the number of people eligible for notification of offender release, which would require additional resources and manpower by TDCJ and local sheriffs. Witness notification via e-mail would add costs and often would be ineffective. The bill would not provide additional resources to cover the notification burden it would impose.

Many of the vendors who provide notification services contact victims by telephone. A transition to an e-mail based system would require time and money. Additionally, the new definition of a reasonable attempt to give notice in CSHB 963 would be onerous because it would require an attempt to notify both through e-mail and through a physical mailing.

CSHB 963 would not achieve its goal of notification because people change e-mail addresses often or their e-mail accounts could expire. Furthermore, not everyone has an e-mail address. Giving notice by postal mail would be a better method of notification because most people have a mailing address and postal mail is more easily forwarded to a correct address. The current system, which allows victims to check websites or call hotlines, is a sufficient approach and allows the state to provide information at the moment the consumer requests it.

OTHER
OPPONENTS
SAY:

CSHB 963 would be over-inclusive by requiring prosecutors to inform victims and witnesses following the conviction of a defendant of the victim's or witness's right to notification. The bill thus would require prosecutors to inform law enforcement officers, expert witnesses, and others who routinely testify as a part of their jobs. These groups are not likely to eventually request notification. Therefore, prosecutor resources would be poorly spent on informing them. It also would be more efficient for prosecutors to inform victims and witnesses either before or after the

trial because it is easier to maintain contact with these groups during their immediate involvement with the prosecutor's office.

NOTES:

The original bill would have been known as the "Diana Hinojosa Leal Act." The committee substitute removed that designation.