

BILL ANALYSIS

Senate Research Center
81R26752 PEP-F

C.S.S.B. 2075
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Criminal Justice
5/1/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Many people accept deferred adjudication community supervision with the assurance that, upon completion, the offense will not affect their permanent record. However, under current law, an order of deferred adjudication community supervision remains a permanent part of that person's criminal history record. Additionally, despite the unambiguous language of Article 42.12, Code of Criminal Procedure, stating that a discharge and dismissal may not be deemed a conviction except in three specific circumstances, numerous other statutes currently define an order of deferred adjudication community supervision as a conviction.

As the law currently stands, a person can petition the court for an order of nondisclosure of certain criminal records. However, an order of nondisclosure has not been an adequate remedy for most people. Numerous state entities are permitted to access a record of deferred adjudication that is subject to an order of nondisclosure. In most cases, a record of deferred adjudication community supervision that has resulted in a discharge and dismissal can be used by those entities to deny a person employment, certification, licensure or other statutory privileges.

C.S.S.B. 2075 amends current law relating to the consequences of successfully completing a term of deferred adjudication community supervision with respect to the expunction or use of certain criminal history records and files.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 55.01, Code of Criminal Procedure, by amending Subsection (b) and adding Subsection (e), as follows:

(b) Authorizes a district court, except as provided by Subsection (c), rather than Subsection (c) of this section, to expunge all records and files relating to the arrest of a person who has been arrested for commission of a felony or misdemeanor under the procedure established under Article 55.02 (Procedure for Expunction), rather than Article 55.02 of this code, if the person:

(1) is tried for the offense for which the person was arrested, is convicted of the offense, and is acquitted by the court of criminal appeals;

(2) is placed on deferred adjudication community supervision under Section 5 (relating to a judge's order for community supervision), Article 42.12 (Community Supervision), for the offense for which the person was arrested and meets the requirements of Subsection (e). Makes nonsubstantive changes.

(e) Provides that a person is eligible for an expunction under Subsection (b)(2) if the person:

(1) meets the requirements to be eligible for an order of nondisclosure under Section 411.081(d) (relating to deferred adjudication community supervision), Government Code, with respect to the offense for which the person was arrested

and placed on deferred adjudication community supervision, regardless of whether, with respect to that offense, an order of nondisclosure was previously issued to the person or the person previously petitioned the court for an order of nondisclosure;

(2) with respect to the offense for which the person was arrested and placed on deferred adjudication community supervision, petitions the court for an order of expunction under Article 55.02 only on or after the second anniversary of the discharge and dismissal, if the offense was a misdemeanor described by Section 411.081(d)(1) (relating to payment made only on or after the discharge and dismissal under certain circumstances), Government Code; the fourth anniversary of the discharge and dismissal, if the offense was a misdemeanor described by Section 411.081(d)(2) (relating to payment made only on or after the second anniversary of the discharge and dismissal under certain circumstances), Government Code; the eighth anniversary of the discharge and dismissal, if the offense was a state jail felony; or the 10th anniversary of the discharge and dismissal, if the offense was a felony other than a state jail felony; and

(3) during the period of deferred adjudication community supervision for the offense and during the applicable period described by Subdivision (2), is not convicted of or placed on deferred adjudication community supervision for any offense other than an offense under the Transportation Code punishable by fine only.

SECTION 2. Amends Section 53.021, Occupations Code, by adding Subsections (c), (d), and (e), as follows:

(c) Prohibits a licensing authority, except as provided by Subsections (d) and (e), notwithstanding any other law, from considering a person to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization the person entered a plea of guilty or nolo contendere; the judge deferred further proceedings without entering an adjudication of guilt and placed the person under the supervision of the court or an officer under the supervision of the court; and at the end of the period of supervision, the judge dismissed the proceedings and discharged the person.

(d) Authorizes a licensing authority to consider a person to have been convicted of an offense for purposes of this section regardless of whether the proceedings were dismissed and the person was discharged by Subsection (c) if, after consideration of the factors described by Sections 53.022 (Factors in Determining Whether Conviction Relates to Occupation) and 53.023(a) (relating to certain factors required to be considered by the licensing authority), the licensing authority determines that the person may pose a continued threat to public safety; or employment of the person in which the licensed occupation would create a situation in which the person has an opportunity to repeat the prohibited conduct.

(e) Provides that Subsection (c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide law enforcement or public health, education, or safety services.

SECTION 3. Provides that the change in law made by this Act to Article 55.01, Code of Criminal Procedure, applies to a person who, on or after the effective date of this Act, seeks expunction of records and files relating to an arrest, regardless of whether the arrest occurred before, on, or after the effective date of this Act.

SECTION 4. Effective date: upon passage or September 1, 2009.