SUBJECT: Nondisclosure for probationers whose convictions were set aside

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Herrero, Burnam, Canales, Leach, Schaefer

3 nays — Carter, Moody, Toth

1 absent — Hughes

SENATE VOTE: On final passage, May 8 — 30 - 0, on Local and Uncontested Calendar

WITNESSES: For — Marc Levin, Texas Public Policy Foundation Center for Effective Justice; Jorge Renaud, Texas Criminal Justice Coalition; (*Registered, but did not testify*: Yannis Banks, Texas NAACP; Craig Pardue, Dallas County; Kandice Sanaie, Texas Association of Business)

Against — (*Registered, but did not testify:* Donnis Baggett, Texas Press Association; Michael Schneider, Texas Association of Broadcasters)

On — (*Registered, but did not testify:* Shannon Edmonds, Texas District and County Attorneys Association)

BACKGROUND: Deferred adjudication is a form of probation under which a judge postpones the determination of guilt while the defendant serves probation. It can result in the defendant being discharged and dismissed upon successful completion of that probation.

Under Government Code, sec. 411.081(d), persons receiving a discharge and dismissal from deferred adjudication who also meet certain conditions may ask the court for an order of nondisclosure of their criminal records. These conditions include not being convicted of or placed on deferred adjudication for certain offenses while on deferred adjudication and not having previous convictions for certain violent, sex, or family violence offenses.

If a court issues an order of nondisclosure, criminal justice agencies are prohibited from disclosing to the public criminal history records subject to

the order. This makes criminal history records unavailable to the public but allows criminal justice agencies access to them and allows access by certain other listed entities listed in sec.411.081 (i).

Under Code of Criminal Procedure, sec. 42.12, sec. 20(a), certain persons placed on community supervision (probation) who complete at least one-third of their probation terms, or two years, whichever is less, can have their probation term reduced or terminated. If the probationer is discharged, the judge can set aside the verdict or allow the probationer to withdraw a plea and must dismiss the case. The person is then released from the penalties from the offense except that the conviction or guilty plea will be made known to a judge if the person is convicted of another offense or in the course of licensing for certain human service agencies.

DIGEST:

SB 1172 would expand those who could ask a court for an order of nondisclosure to include persons placed on community supervision who had their probation terms reduced or terminated by a judge after serving at least one-third of the terms and their convictions set aside. This would apply only to those who would not be barred from asking for an order of nondisclosure if they had been placed on deferred adjudication for certain offenses.

After notice to the prosecutor and a hearing on whether the nondisclosure was in the best interest of justice and whether the person met the criteria to ask for nondisclosure, courts would be required to issue an order.

The order would prohibit criminal justice agencies from disclosing to the public the criminal history record related to the offense for which the person was put on probation. Criminal justice agencies could disclose information subject to the order only to other criminal justice agencies for criminal justice purposes, to agencies that currently can receive information when deferred adjudications are sealed under a nondisclosure order and to the person subject to the order.

Persons could petition the court for an order of nondisclosure after the conviction was set aside, if the offense was a misdemeanor. If the conviction were a felony, the petition could be made five years after a conviction was set aside. The current fee of $28 would apply.

The bill would take effect September 1, 2013, and would apply to persons whose convictions were set aside on or after that date, regardless of when the offense occurred.

SUPPORTERS SAY:

SB 1172 is needed to give probationers who have their verdicts set aside the same options for handling their criminal records as are currently given to other similar offenders.

Currently, the records of probationers whose terms are reduced or terminated and then set aside are not eligible to be sealed after an order of nondisclosure. These records also are not eligible for pardons followed by an expunction because when a conviction is set aside, there is no conviction to pardon. This leaves these offenders no options for asking to have their records closed to the public. When criminal records are publicly available people can have difficulties with access to housing, jobs, school, and more.

Although the option of setting aside a verdict after probation is not used often, these offenders should have a way to ask for nondisclosure since other criminal defendants have ways to accomplish this. Those receiving deferred adjudication can receive an order of nondisclosure. In addition, if a pardon is granted for deferred adjudication these records can be expunged. Persons who are convicted can receive a pardon, making records eligible to be expunged.

SB 1172 would remedy this by allowing this narrow group of deserving probationers to ask courts to have their record sealed under the same process and guidelines used for those given deferred adjudication. Offenders convicted of or with previous convictions for certain offenses would not be eligible. They would have had to have been successful on probation and had a judge reduce or terminate their probation and set aside their sentence. For felony offenses, they would have had to wait another five years. Asking for nondisclosures would not guarantee it would happen; courts would make the final decision.

The state has deemed that restricting public access to criminal records is appropriate in some circumstances, and SB 1172 would be consistent those circumstances. Courts would have deemed the person worthy of probation, which was then terminated, and the conviction set aside. This is analogous to offenders who are given deferred adjudication and then have their cases dismissed. These offenders would have paid their debt and

demonstrated that they were not a threat and deserve a chance to ask for nondisclosure.

Criminal justice agencies would continue to access to these records and could use them if the person again ran afoul of the law.

OPPONENTS SAY:

The state should not expand those who can have their records sealed through orders of nondisclosure. Disclosure was designed for a limited, narrow group of offenders who receive deferred adjudication under which they were not convicted. SB 1172 would inappropriately expand nondisclosure to a class of offenders who have been convicted.

The state should maintain the access to criminal court records that current law provides. As eligibility for requests for orders of nondisclosure is expanded and more records are sealed this access is restricted. Access can be important for the public, employers, landlords, the press, and others. Public records help hold offenders accountable and ensure public safety.