

SUBJECT: Allowing governor to issue pardon after successful deferred adjudication

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Gallego, Burkett, Carter, Christian, Zedler

0 nays

4 absent — Hartnett, Aliseda, Y, Davis, Rodriguez

SENATE VOTE: On final passage, March 23 — 31-0

WITNESSES: For — Shannon Edmonds, Texas District and County Attorneys Association; (*Registered, but did not testify*: Tracey Hayes, ACLU of Texas)

Against — None

BACKGROUND: Texas Constitution, Art. 4, sec. 11(b) and Code of Criminal Procedure, art. 48.01 authorize the governor to grant reprieves, commutations of punishments, and pardons after a criminal conviction. The governor can exercise this authority only upon the recommendation of the Board of Pardons and Paroles and in all criminal cases except treason and impeachment.

Under Code of Criminal Procedure, art. 42.12, sec. 5, a judge may, after receiving a plea of guilty or no contest, defer further proceedings without entering an adjudication of guilt and place the defendant on community supervision (probation). If the defendant successfully completes the community supervision, the judge must dismiss the charges and discharge the defendant. This process is known as deferred adjudication and is unavailable for certain specified offenses.

DIGEST: SJR 11 would expand the governor's authority to grant pardons, reprieves, and commutations, upon recommendation of the Board of Pardons and Paroles, to cases in which a person had successfully completed a term of deferred adjudication.

The proposal would be presented to the voters at an election on Tuesday, November 8, 2011. The ballot proposal would read: “The constitutional amendment authorizing the governor to grant a pardon to a person who successfully completes a term of deferred adjudication community supervision.”

**SUPPORTERS  
SAY:**

SJR 9 would correct an inequity in Texas law so that people who completed successfully a term of deferred adjudication could be eligible for a pardon. Currently, the governor can grant pardons to people who have been convicted but does not have the same authority for those who completed deferred adjudication because such cases carry no conviction. Even though there is no record of a conviction in these cases, there is a record of the arrest and of the fact that a person was given a term of deferred adjudication, which is a form of probation. Having any type of criminal record can present barriers in finding employment and housing and gaining admission to schools.

SJR 9 would address this problem by providing a possible avenue of relief for people who completed successfully a sentence of deferred adjudication. Under the bill, they could apply for a pardon and, if granted, they could have their records expunged. SJR 9 would be a common-sense application of the governor’s power and would result in a more consistent policy on pardons. Others who actually are convicted of an offense have the option of applying for a pardon, and those completing deferred adjudication should have the same option.

This proposal would not result in an automatic pardon or the automatic expunction of anyone’s record. Those receiving pardons under the authority in SJR 9 would have to follow the standard vetting procedure that ensured a pardon was deserved. They would have to apply to the Board of Pardons and Paroles, which would consider the case and then would have to recommend the pardon to the governor. The governor still would have full discretion about whether to grant a pardon. However, once a pardon was awarded, a person could meet the requirements for expunction and could have his or her criminal history removed from the public domain.

Current law does not preserve indefinitely all criminal records, but makes reasoned, limited exceptions to the public’s access to these records. This proposal would be another such exception.

The 81st Legislature enacted SB 223 by West, which would have allowed the governor to issue a pardon after successful deferred adjudication. However, the governor vetoed the bill, saying that it had no effect without the adoption of a corresponding constitutional amendment, which was not approved by the 81st Legislature. In 2009, the corresponding amendment was adopted by the Senate and placed on the House's May 20 Constitutional Amendment Calendar, but was not considered.

OPPONENTS  
SAY:

The state should be cautious about any new restrictions on the public's access to criminal history record information. The record of someone who has completed deferred adjudication accurately states that the person completed their term and that the charges were dismissed, and this should remain public information.

NOTES:

The enabling legislation for SJR 9, SB 144 by West, was reported favorably, without amendment, by the House Criminal Jurisprudence Committee on May 11 and sent to the Local and Consent Calendars Committee. It was placed on the May 20 Local, Consent, and Resolutions Calendar, withdrawn from the calendar, and returned to the Local and Consent Calendars Committee, which placed the bill on today's Local, Consent, and Resolutions Calendar.