

SUBJECT: Expunging certain misdemeanor arrests after a deferred adjudication

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Moody, Canales, Gervin-Hawkins, Hefner, Lang, Wilson

0 nays

1 absent — Hunter

WITNESSES: For — David Gonzalez, Texas Criminal Defense Lawyers Association; Michael Haugen, Texas Public Policy Foundation; (*Registered, but did not testify*: Kathryn Freeman, Texas Baptist Christian Life Commission; James Cunningham, Texas Coalition of Veterans Organizations and Military Officers Association of America-Texas; Kathy Mitchell, Texas Criminal Justice Coalition; Chris Howe)

Against — (*Registered, but did not testify*: Clay Taylor, Department of Public Safety Officers Association; David Sinclair, Game Warden Peace Officers Association; Ray Hunt, Houston Police Officers' Union)

On — Shannon Edmonds, Texas District and County Attorneys Association

BACKGROUND: Code of Criminal Procedure, art. 55 allows individuals who have been acquitted of a crime or had certain charges dismissed to seek an expunction of their records.

Article 42A.101 allows judges in criminal cases to establish the conditions of community supervision (probation) for a defendant on deferred adjudication. 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.

DIGEST: CSHB 670 would entitle an individual who had been arrested for certain

misdemeanors to an expunction if the individual:

- had successfully completed deferred adjudication community supervision and subsequently received a discharge and dismissal;
- was not required to register as a sex offender;
- had not subsequently been convicted of or placed on deferred adjudication community supervision for a Class A or Class B misdemeanor or a felony;
- had no charges pending for any offense other than an offense punishable only by a fine; and
- had waited five years from the date on which the individual received the discharge and dismissal.

Misdemeanors against public order, or involving organized crime, weapons, indecency, or crimes against persons would not be eligible for expunction.

The bill would require the individual to submit a petition to the court stating that the individual had met the conditions for expunction.

If the court found that the applicant had satisfied all the conditions required, then the applicant would be entitled to an expunction and the court would issue an order of expunction.

The bill would require courts to waive any costs associated with applying for an expunction for eligible indigent applicants.

The bill would take effect September 1, 2017.

**SUPPORTERS
SAY:**

CSHB 670 would help individuals placed on deferred adjudication who complied with all of a court's instructions to receive an expunction and avoid the stigma of having a conviction on their record. Currently, due to the way the expunction statute is worded, defendants who are placed on deferred adjudication are unable to get an expunction even if all of the terms were successfully completed. This makes deferred adjudication a less attractive option for defendants and can make some cases more

difficult to resolve. The bill would give defendants a powerful incentive to comply with all of the terms of a deferred adjudication and reduce their likelihood of reoffending.

The bill is narrow in scope and would keep the public safe. Registered sex offenders would be ineligible, as would anyone seeking to expunge an offense involving weapons, organized crime, indecency, or crimes against persons or the public order. Prosecutors and judges already ensure that only deserving defendants receive deferred adjudication. The limits imposed by the bill on who would be eligible for this type of expunction make it abundantly clear that public safety is always the paramount concern in the criminal justice system.

While orders of nondisclosure are available in some cases, those orders are discretionary, and law enforcement agencies still may disclose criminal history information to state professional licensing boards and many other public entities. The bill would remove this potential career obstacle for individuals who have had minor brushes with the law and have demonstrated a commitment to rehabilitation.

CSHB 670 would not have a significant impact on the ability to vet candidates for sensitive employment positions. Background investigations are no substitute for good training and sound judgment. Individuals with clean criminal histories also commit crimes, and background checks under current law have cleared candidates who have gone on to commit serious acts of violence and abuses of power. By requiring a five-year waiting period with no new offenses, the bill would ensure that only those who have demonstrated a serious commitment to rehabilitation would be eligible for an expunction.

**OPPONENTS
SAY:**

Lawmakers should be cautious about expanding the scope of expunctions, as proposed by CSHB 670. Expunged records are destroyed, and this traditionally has been limited to cases involving acquittal or in which the prosecution has decided not to pursue the case. Eligible individuals already can apply for orders of non-disclosure that provide the same benefits but still allow law enforcement and other agencies to access

criminal history when necessary.

Law enforcement agencies routinely conduct thorough background investigations as part of their hiring process. There would be no way for the agencies to properly vet peace officer candidates if records of the applicant being placed on community supervision could be expunged.

NOTES:

CSHB 670 differs from the filed bill in that the committee substitute would prevent an individual from applying for an expunction if the individual:

- was required to register as a sex offender as part of the individual's supervision or release; or
- was charged with offenses against public order, organized criminal activity, weapons offenses, or indecency.